2208.

SUPREME COURT OF THE UNITED STATES.

No. 235.

SAMUEL IRVINE AND PETER FORBES, PLFF'S,

vs.

HEMAN J. REDFIELD, LATE COLLECTOR, &c.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

Certificate of Division.

UNITED STATES OF AMERICA,

Second circuit and southern district of New York.

At a circuit court of the United States for the second circuit and southern district of New York, began and held at the City Hall, in the city of New York, on the 23d day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

Present, the Honorable Samuel Nelson and Charles A. Ingersoll.

SAMUEL IRVINE AND PETER FORBES
agst.
HERNEN J. REDFIELD, late collector of the customs of the United States at the port of New York.

This was an action of assumpsit on the common money counts brought by the plaintiffs against the defendant as late collector of customs of the United States at the port of New York, to which the defendant pleaded the general issue of non-assumpsit.

This case coming on to be argued at this term, it occurred as a question, whether by the period of exportation of merchandise from a foreign country to the United States, as used in the act of Congress entitled "An act to amend the acts regulating the appraisement of imported merchandise, and for other purposes," approved 3d March, 1851, was to be held to mean the time when the merchandise had been laden aboard a general ship, and the bill of lading therefor given in the foreign port, or the time when said ship actually departed from said foreign port destined for the United States.

On which question, the opinion of the judges were opposed.

Whereupon, on motion of the plaintiffs, by their counsel, John S. McCulloh, that the point on which the disagreement hath happened may, during the term, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court, to be finally decided—

It is ordered, that the foregoing state of the pleadings, and the following statement of facts, which is made under the direction of the judges, be certified according to the request of the plaintiffs, by their counsel, and the law in that case made and provided, to wit:

That the ship "Henry Buck" was a general ship, at the port of Glasgow, in Scotland, in the month of May, 1855, destined for the port of New York, in the United States; that the plaintiffs, on the ninth day of May, 1855, bought three hundred tons of Coltness pig iron, at the then wholesale market price of sixty-four shillings sterling per ton, and immediately commenced to load the same aboard ship, and that said iron was all laden aboard ship, and bills of lading given therefor on the twenty-second day of May, 1855, on which day the wholesale market price of said iron had risen to sixty-nine shillings sterling per ton; that thereafter said ship remained at the port of Glasgow until the fourth day of June, 1855, when she sailed, on which day the wholesale market price of said iron had risen to seventy-four shillings and sixpence sterling per ton; and that on the arrival of said ship in the United States, said iron was appraised at the price of seventy-four shillings and sixpence sterling per ton as the market price of said iron on the fourth day of June, 1855. And thereupon the defendant collected duty on the said appraised price, and the penalty of twenty per cent. on said appraised value as assessed by the 8th section of the act of Congress entitled "An act reducing the duty on imports and for other purposes," approved 30th July, 1846.

UNITED STATES OF AMERICA,
Second circuit and southern district of New York.

I, Kenneth G. White, clerk of the circuit court of the United States for the second circuit and southern district of New York, do hereby certify the foregoing to be a copy from the minutes.

Given under my hand and seal of office at the city of New York, on the 23d day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

[SEAL.]

KENNETH G. WHITE, *Clerk.*

DEC. 15, 1857.

Approved.

S. N.
CHAS. A. INGERSOLL.

Filed 22d Jan., 1858.

2209

SUPREME COURT OF THE UNITED STATES.

No. 125.

BRYAN ROACH AND DENNIS LONG, COMPOSING THE FIRM OF ROACH & LONG, LIBELLANTS AND APP'TS,

VS.

WILLIAM CHAPMAN AND AL., CLAIMANTS OF THE STEAMER CAPITOL, AND DANIEL EDWARDS AND JOSEPH MAILLOT, SURETIES.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

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CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern District of Louisiana.

Transcript of Record from U. S. District Court, east. dis't of Louisiana.—Filed 5th Nov'r, 1856.

U. S. DIST. COURT, EAST. DIST. OF LA.

ROACH & LONG
vs.
STR. CAPITOL. } In admiralty, No. 7089.

Libel.—Dec'r 15th, 1855.

To the Hon. the judge of the dis't court of the United States for the eastern district of Louisiana, in admiralty, sitting:

This libel and complaint of Roach & Long, a commercial firm, composed of Bryan Roach and Dennis Long, residing and doing business in the city of Louisville, State of Kentucky, against the Steamboat "Capitol," her tackle, apparel, and furniture, in a cause of contract civil and maritime; and thereupon the said libellants allege and articulately propound as follows:

1st. That on the second of January, 1855, or some time prior thereto, these libellants furnished to said steamer "Capitol," on the credit of said boat as well as of the master and owners thereof, materials and labor and machinery for the building and furnishing of the same, all of which will more fully appear by reference to a bill of particulars to be produced on the trial herein.

2d. That for the price of said materials, labor, machinery, the said master, James H. Ure, who was also part owner of said steamer, being duly authorized to that effect, gave, in part payment thereof, a draft or bill of exchange, in favor of said libellants, and in the name and on behalf of said steamer and owners, for the sum of two thousand nine hundred and forty-seven $\frac{48}{100}$ dollars, not novating, however, the original debt for the price of said materials, labor, &c., privileged by the laws of the State of Kentucky and by the general laws of admiralty, on said steamer, her tackle, apparel, and furniture, as libellants are advised, and as will more fully appear by subsequent articles.

3d. That said labor, materials, &c., aforesaid, were furnished as aforesaid in the port of Louisville, State of Kentucky, and according to the laws of that State, and the general admiralty laws, bear a privilege on said steamer, her tackle, apparel, and furniture.

4th. That, as will appear by reference to said draft and protest, hereunto annexed for reference, said sum of $2,947 48 is still due

with legal interest of the State of Kentucky, from the 2d January, 1855, with five dollars costs of protest.

5th. Libellants herewith file the said draft, to be surrendered up to the claimants or owners of said boat upon payment of the sum due.

6th. That all and singular the premises are true, and within the maritime and admiralty jurisdiction of this Hon. court, and that said steamer is now in the port of New Orleans, and about departing therefrom.

Wherefore libellants pray that admiralty process may issue against said steamer, her tackle, apparel, and furniture, and that after due proceedings, they be condemned to be sold to satify the claim of libellants aforesaid, with the interest and costs, for a decree of privilege on said steamer, her tackle, apparel, and furniture, or its proceeds, and for all further equitable relief.

(Signed) T. B. HART,
Proctor.

Personally appeared before the undersigned authority T. B. Hart, who being duly sworn, declares that he is duly authorized to represent the libellants in this behalf, and that affiant verily believes the allegations of the foregoing libel to be true and correct.

(Signed) J. B. HART.

Sworn to, and subscribed before me, this 15th day of December, A. D. 1855.

(Signed) N. R. JENNINGS, *Clerk.*

ROACH & LONG
vs.
STR. "CAPITOL." } In admiralty, No. 7089.

Draft annexed to foregoing Libel.

(1) Exchange for $2,947 $\frac{43}{100}$.

LOUISVILLE, KY., *Jan'y 2d*, 1854.

Nine months after date of this my first of exchange, second unpaid, pay to the order of Messrs. Roach & Long, twenty-nine hundred and forty-seven $\frac{48}{100}$ dollars, value received, and charge ac. S'mb't Capitol and owners.

(Signed) JAMES H. URE.

To JA'S H. URE, 2667.
New Orleans.

Endorsed: James H. Ure. 2,947 48. 2 Oct. (Signed) Roach & Long. Pay to R. T. Palfrey, or order.
[Erased:] J. B. Alexander, Cas.

[Endorsement on the face :] No. 2667. Accepted. Payable at the banking-house of Ja's Robbs & Co.
(Signed) JAMES H. URE.

Protest.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this fifth day of October, in the year one thousand eight hundred and fifty-five, at the request of the cashier of and holder for the branch of the Louisiana State Bank, first district, of the original draft whereof a true copy is on the reverse hereof written—

I, Achille Chiapella, notary public, dwelling in the city of New Orleans, duly commissioned, demanded payment for said draft, at the banking-house of Ja's Robbs & Co., on Camp street, where the same is made payable, I was answered by the paying teller to whom I presented said draft that no funds had been deposited there to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern for all exchange, re-exchange, damages, costs, charges, and interest suffered or to be suffered for want of payment of the said draft.

Thus done and protested in the presence of Selim Magner and Edward S. Audler, witnesses.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) A. CHIAPELLA,
Notary Public.

(Signed) S. MAGNER,
(Signed) EDWARD S. AUDLER.

Exchange for $\$2{,}947\frac{48}{100}$.

LOUISVILLE, KY., *Jan'y* 2, 1855.

Nine months after date of this my first of exchange, (second unpaid,) pay to the order of Messrs. Roach & Long twenty-nine hundred and forty-seven $\frac{48}{100}$ dollars, value received, and charge to ac. smbt. "Capitol" and owners.

JAMES H. URE.

To JAS. H. URE, *New Orleans.*

Endorsed : Roach & Long. Pay R. S. Palfrey, cas., or order. J. B. Alexander, cas.

I, Achille Chiapella, a notary public in and for the parish of

Orleans, and State of Louisiana, residing in the city of New Orleans, duly commissioned and sworn, do certify that on the day of this protest notified the drawers and all the endorsers of the draft hereunto attached of the within protest of the same for non-payment, by notices in writing and print, by me signed, of the same date with the said protest, and which notices say, to James H. Ure or order, Roach & Long, and J. B. Alexander, cas., endorsers, all enclosed to the address of the latter, Louisville, Ky., by me, notary; and on the same day I deposited said notices in the post office in this city in time to go by the first mail thereafter; and duplicate notice to Jas. H. Ure, drawer, I left at his domicil in Condé street with a servant, no white or free person being on the premises.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, in the city of New Orleans aforesaid, on the fifth day of October, A. D. 1855.

(Signed) A. CHIAPELLA,
Notary Public.

Warrant.

The President of United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded *forewith* to seize, and into your possession take, the str. "Capitol," her tackle, apparel, and furniture, now libelled by Bryan Roach and Dennis Long, a commercial firm, situate and doing business in Louisville, Ky., in a cause of contract, civil and maritime, claiming $2,947 48, with legal interest from the 2d January, 1855, and five dollars costs of protest, in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said "steamer Capitol," her tackle, apparel, and furniture, should not be condemned and sold, agreeably to the prayer of the libellants; and how you have executed this warrant, that you make return according to law.

Witness, the honorable Theo. H. McCaleb, judge of the said court, this fifteenth day of December, 1855, and the eightieth (80th) year of the independence of the United States.

[SEAL.]

(Signed) N. R. JANNINGS, *Ck.*

Marshal's Return.

Rec'd December 15th, 1855, and on the same day I seized and took into my possession the said steamer "Capitol," her apparel,

tackle, and furniture. On the same day, William Chapman, as part owner and on behalf of his co-owners, filed, according to law, their claim to said steamer "Capitol" in the clerk's office of said court. On same day an order of release was issued from said court, which is hereunto annexed, mark ("A.") On the same day, the said Chapman, for himself as co-owner, and James H. Ure as surety, executed and delivered to me their admiralty stipulation according to law and in pursuance of said order of release; which stipulation is hereto annexed, marked "B," issued on the same day the said Chapman paid me the sum of $7 25 clerk's costs, and $8 95 marshal's costs; whereupon, on the said 15th Dec., 1855, I released the said steamer Capitol, and delivered her into the possession of the claimants.

Returned 19th Dec., 1855.

(Signed) EMILE MARY, *Dp. M.*

No. 7089. *Claim.*—Filed Dec. 15th, 1855.

And now comes into court in the above-entitled suits Wm. Chapman, part owner of the above-named steamer "Capitol," who, on oath, deposes that the only true and bona fide owners of said steamer are John Chapman, David Stonaker, Alexander Poché, of parish of St. James, Thomas M, Ure, Gerard Mengis, of the city of New Orleans, and deponent, resident in the parish of St. James; and, as part owner thereof, that he is duly authorized to claim said steamer on behalf of his said co-owners.

Wherefore deponent prays that said steamer be released from seizure, and restored to his possession as part owner thereof, on his giving bond, conditioned according to law, and on his otherwise complying with the rules of court.

(Signed) W. CHAPMAN.

Sworn to and subscribed at New Orleans, this 15th December, 1855, before—

(Signed) R. M. LUSHER,
U. S. Com'r.

Bond for $5,800.—Filed and recorded Dec'r 27th, 1855.

Know all men by these presents, that we, William Chapman, John Chapman, David Stonaker, Gerard Mengis, of the parish of St. James, Alexander Poché, Thomas M. Ure, of New Orleans, claimants of the steamer "Capitol," as principals, and Daniel Edwards, for the sum of $2,000, and Joseph Maillott, for $3,000, and William Davis, for the sum of $800, as sureties, are held and firmly bound unto Bryant Roach and Dennis Long, libellants, in the sum of five thousand eight hundred dollars—that is to say, Daniel Edwards is bound in the sum of two thousand dollars, Joseph Maillot is bound in the sum of three thousand dollars, and the said William

Orleans, and State of Louisiana, residing in the city of New Orleans, duly commissioned and sworn, do certify that on the day of this protest notified the drawers and all the endorsers of the draft hereunto attached of the within protest of the same for non-payment, by notices in writing and print, by me signed, of the same date with the said protest, and which notices say, to James H. Ure or order, Roach & Long, and J. B. Alexander, cas., endorsers, all enclosed to the address of the latter, Louisville, Ky., by me, notary; and on the same day I deposited said notices in the post office in this city in time to go by the first mail thereafter; and duplicate notice to Jas. H. Ure, drawer, I left at his domicil in Condé street with a servant, no white or free person being on the premises.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, in the city of New Orleans aforesaid, on the fifth day of October, A. D. 1855.

(Signed) A. CHIAPELLA,
Notary Public.

Warrant.

The President of United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

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Witness, the honorable Theo. H. McCaleb, judge of the said court, this fifteenth day of December, 1855, and the eightieth (80th) year of the independence of the United States.

[SEAL.]

(Signed) N. R. JANNINGS, *Ck.*

Marshal's Return.

Rec'd December 15th, 1855, and on the same day I seized and took into my possession the said steamer "Capitol," her apparel,

2212

tackle, and furniture. On the same day, William Chapman, as part owner and on behalf of his co-owners, filed, according to law, their claim to said steamer "Capitol" in the clerk's office of said court. On same day an order of release was issued from said court, which is hereunto annexed, mark ("A.") On the same day, the said Chapman, for himself as co-owner, and James H. Ure as surety, executed and delivered to me their admiralty stipulation according to law and in pursuance of said order of release; which stipulation is hereto annexed, marked "B," issued on the same day the said Chapman paid me the sum of $7 25 clerk's costs, and $8 95 marshal's costs; whereupon, on the said 15th Dec., 1855, I released the said steamer Capitol, and delivered her into the possession of the claimants.

Returned 19th Dec., 1855.

(Signed) EMILE MARY, *Dp. M.*

No. 7089. *Claim.*—Filed Dec. 15th, 1855.

And now comes into court in the above-entitled suits Wm. Chapman, part owner of the above-named steamer "Capitol," who, on oath, deposes that the only true and bona fide owners of said steamer are John Chapman, David Stonaker, Alexander Poché, of parish of St. James, Thomas M, Ure, Gerard Mengis, of the city of New Orleans, and deponent, resident in the parish of St. James; and, as part owner thereof, that he is duly authorized to claim said steamer on behalf of his said co-owners.

Wherefore deponent prays that said steamer be released from seizure, and restored to his possession as part owner thereof, on his giving bond, conditioned according to law, and on his otherwise complying with the rules of court.

(Signed) W. CHAPMAN.

Sworn to and subscribed at New Orleans, this 15th December, 1855, before—

(Signed) R. M. LUSHER,
U. S. Com'r.

Bond for $5,800.—Filed and recorded Dec'r 27th, 1855.

Know all men by these presents, that we, William Chapman, John Chapman, David Stonaker, Gerard Mengis, of the parish of St. James, Alexander Poché, Thomas M. Ure, of New Orleans, claimants of the steamer "Capitol," as principals, and Daniel Edwards, for the sum of $2,000, and Joseph Maillott, for $3,000, and William Davis, for the sum of $800, as sureties, are held and firmly bound unto Bryant Roach and Dennis Long, libellants, in the sum of five thousand eight hundred dollars—that is to say, Daniel Edwards is bound in the sum of two thousand dollars, Joseph Maillot is bound in the sum of three thousand dollars, and the said William

Davis is bound in the sum of eight hundred dollars, lawful money of the United States, for the payment whereof to the said Bryant Roach and Dennis Long, their heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our respective names and seals hereunto affixed by us at New Orleans, this 26th day of December, one thousand eight hundred and fifty-five.

Whereas, an admiralty warrant was lately issued out of the honorable the district court of the United States for the eastern district of Louisiana, at the suit of Roach & Long vs. steamer "Capitol," her tackle, apparel, and furniture, and numbered 7089 on the docket of the said court, commanding the marshal to seize and take into his possession the said steamer "Capitol," which has been seized accordingly, but has been released from said seizure, and delivered to Thomas M. Ure, the agent, claimant, Bailes, and master thereof, the said claimants having at the time, and by reason of the signing, sealing, and delivery of these presents, filed a claim to the said steamer Capitol, in the clerk's office of the said court, and which claim is now of record:

Now, the condition of the above obligation is such, that if the said claimant and sureties abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is void; but, otherwise, shall remain in full force and virtue.

(Signed) W. CHAPMAN,
" T. CHAPMAN,
" D. STONAKER,
" G. MENGIS,
" A. POCHE,
" For THO'S M. URE, [SEAL.]
" T. [SEAL.]
" DAN'L EDWARDS, [SEAL.]
" J. MAILLOT, [SEAL.]
" WILLIAM DAVIS, [SEAL.]

Signed, sealed, and delivered in the presence of—

Sureties justified as to their sufficiency by U. S. Com'r, William Cornelius.

Note.

The bond referred to in the marshal's return on the warrant as executed by claimants, on the 15th Dec'r, 1855, was set aside as insufficient, by order of court of 24th Dec'r, 1855, and the "Capitol," re-seized by the marshal; when, on the 26th Dec'r, the foregoing bond was furnished, and filed, and recorded.

ROB'T M. LUSHER, *D'y Cl'k.*

Exception to Jurisdiction.

And now come into court William Chapman, John Chapman, David Stonacker, Alexander Poché, Edward Mengris, and Thomas M. Ure, owners and claimants of the steamer "Capitol," and for the purpose of excepting to and declining the jurisdiction of this honorable court, and reserving to themselves the right hereafter to file their answer, they respectfully shew:

1st. That it does not appear, from any part of the proceedings, that this honorable court has jurisdiction in the premises.

2d. The laws of Kentucky (within the territorial limits of which State it is alleged the contract or basis of the pretended lien, sought to be enforced by the libellants, was entered into) gave no liens nor privilege upon the said steamer, her tackle, apparel, or furniture, for the payment of the claims set forth by the libellants, or any part thereof, as respondents are advised.

3d. That said lien or privilege, if it ever existed, was waived by the taking of the draft or bill of exchange set forth in the libel of the complainant.

4th. That said lien or privilege, under the laws of Kentucky, if it ever existed, which is denied, became lost and extinguished by the transfer of the said steamer, her tackle, apparel, and furniture, to these respondents, who allege and aver that on or about the 17th day of February, and on the 21st day of April, in the year 1855, they became the sole owners of the said steamer "Capitol," her tackle, apparel, and furniture, entire, having acquired the same by purchase, for a valuable consideration, in good faith, and without any notice of any pretended lien, as claimed under the laws of Kentucky, or otherwise.

5th. That the said pretended lien, if it ever existed, which is denied, and has not been otherwise extinguished, which is averred, has been wiped out by the laws of prescription, as existing in the State of Louisiana.

6th. That this honorable court, sitting in admiralty, has no jurisdiction to enforce a privilege created by the laws of Kentucky, but that local liens must be enforced by courts of ordinary jurisdiction.

And these respondents and claimants further allege—

7th. That no admiralty or maritime privilege existed, as alleged and set forth in the libel of the complainants, because—

1st. The contract, which is the basis of the lien, is not of a maritime nature, nor founded on maritime cause or consideration.

2d. It was not made at sea, or upon waters within ebb and flow of the tide; but at a place not recognized by the maritime law.

3d. That materials alleged to have been furnished, and the work and labor alleged to have been done and performed, were so furnished and done and performed, if at all, before the steamer

"Capitol" had begun any voyage, and at a time and under circumstances where a maritime lien will not attach.

4th. The pretended contract was not made at the place and in the manner and form alleged.

8. The alleged admiralty privilege, if it ever existed, which is denied, was waived by the taking of the draft or bill of exchange, was lost and extinguished by the sale to these respondents, and by the law of prescription, as existing and acknowledged in the State courts of Louisiana and in this honorable court; and these respondents hereby adopt, relative to the pretended admiralty lien, the same allegations and averments made hereinabove against the assumed Kentucky privilege, so far, at least, as such allegations and averments may be applicable.

Wherefore, and for other reasons which these respondents will hereafter urge before this honorable court, they respectfully except to its jurisdiction, and pray for a judgment upon this exception, dismissing the libellant, proceedings at his costs and expense, and such other order, judgment, and decree as the court may have the authority to grant, in favor of these respondents, when dismissing this suit, as prayed for, for want of jurisdiction. And these respondents will ever pray, &c.

(Signed) GEO. S. LACY, R. A. UPTON, &
ROB'T WOOLDRIDGE, *Proctors.*

STATE OF LOUISIANA,
City of New Orleans.

Personally came and appeared before the undersigned authority, Thomas M. Ure, capitain, and one of the owners of the steamer "Capitol," who being by me duly sworn, did depose and say, that he has heard read the foregoing exception, and knows the contents thereof, and that the facts therein stated and the several articulations therein made are true to the best of his knowledge and *belialf.*

(Signed) THO'S M. URE.

Sworn to, and subscribed before me, this 19th day Dec'r, A. D. 1855.

(Signed) R. M. LUSHER,
U. S. Com'r.

Answer.—Filed Dec'r 26th, 1855.

To the honorable Theodore H. McCaleb, judge of the district court of the U. S. within the eastern district of Louisiana:

And now appear before this honorable court William Chapman, John Chapman, Dan'l Stonaker, Alexander Poché, of the parish of St. James, and Gerard Mengis and Tho's M. Ure, of the city of New Orleans, within the district aforesaid, and for answer to the

libel and complaint of Roach & Long, of the city of Louisville, State of Kentucky, against the steamboat "Capitol," her tackle, apparel, and furniture, allege and articulately propounded as follows:

First. The respondents are the true and lawful owners of the steamboat Capitol, having acquired the same in good faith, and for a valuable consideration, by purchase, from James H. Ure, on or about the 17th day of February, 1855; and the 21st day of April, 1855, at the time of which transfer, James H. Ure was the sole and legal owner of the said steamer, her tackle, apparel, and furniture; that said purchase was made at New Orleans, in the State of Louisiana, where the said boat then was; that respondents purchased the said boat, her tackle, apparel, and furniture, free and clear from all incumbrances whatever; and prior to the dates here above set forth, these respondents had no interest whatever as owners in or to any part or portion of said steamer "Capitol."

Second. That it is true, as these respondents are advised and verily believe, that the libellants did *furnished* said steamer "Capitol" materials and labor, in the building of the same; but they deny that the said labor and materials were furnished on the credit of the boat, and aver that they were so furnished on the personal credit of James H. Ure, and no lien or privileges on the boat reserved, as will more fully appear from the express contract between the libellants and the same James H. Ure, and wherein the said libellants, by granting time for the payment of said labor and materials, and otherwise, consented to, and did in fact and at law, waive any lien or privilege which they might have otherwise averred rested upon the said boat, her tackle, apparel, and furniture.

Third. That on or about the 2d day of January, 1855, the said libellant did receive from Ja's F. T. Ure the acceptance sued upon, in full payment of the ac. pretended to be made the basis of their libel; by the taking of which acceptance and receipt in full, the said Roach & Long novated any indebtedness that might have originally existed, and waived any lien or privileges which they might have otherwise urged, or which they might have had either by the local or maritime law.

Fourth. That these respondents deny the allegations of the 3d article of the libel, averring the same to be false; that the materials and labor that were furnished were furnished, a portion of them, at the city of Louisville, in the State of Kentucky, and the remaining portion at Jefferson, in the State of Indiana, and that neither according to the laws of said States, nor according to the general laws of admiralty, did any lien or privileges bear upon the said boat, her tackle, apparel, or furniture, or any portion thereof.

Fifth. That as these respondents are advised and believe, no

admiralty nor maritime law attached to the steamer "Capitol," her tackle, apparel, or furniture, in favor of the libellants' said steamer, never having commenced a voyage at the time the pretended lien is articulated to have begun; and because, furthermore, said contract is not a maritime contract, nor of a maritime nature, nor made within the ebb and flow of tide.

Sixth. That if any lien, local or admiralty, ever did exist, it was not only waived and extinguished, as hereabove particularly articulated, but the same was also waived, extinguished, and forever lost to the libellants, by their permitting the said steamer "Capitol" to depart from the port of Louisville, without the exercise of their right connected with the same, if any they had; without recording the evidence of such lien, according to the laws of Louisiana, where said libellants well knew the said steamer was to be taken for the coast trade between New Orleans and Bayou Sara, and without attempting to enforce the pretended lien while the said boat remained in the possession and was the property of James H. Ure; and because of the sale, transfer, and delivery to these respondents of said steamer Capitol, her tackle, apparel, and furniture, in good faith, &c., as hereinabove articulated.

Seventh. That relative to the truth or falsity of the averment of the 4th article of the libel, these respondents are unable to declare; but they articulate and expressly propound that if the draft annexed to the libel be due to the libellants, as they allege, that the same does not in any manner carry with it any maritime or admiralty lien, or any lien whatever, against the steamer "Capitol," her, tackle, apparel, and furniture.

Eighth. That these respondents aver the falsity of the contents of the sixth article of the libel, and articulate and propound that they are advised and believe that the premises are not true, or within the admiralty jurisdiction of this honorable court.

Ninth. That respondents articulate and propound that the claim of the libellants is a State claim; and the said libellants, by the laws of prescription in this State, and as adopted by the courts of admiralty therein, are barred from having and maintaining the proceedings commenced by them.

Tenth. That all and singular the premises are true, in verification whereof, if denied, these respondents crave leave to refer to the depositions and other proofs to be by them exhibited in their causes.

Wherefore these respondents making this answer, only in case their exception to the jurisdiction be overruled, and not otherwise, pray that this honorable court will be pleased to pronounce that it hath not jurisdiction, and that it ought not to proceed to enforce the claim alleged in the libel aforesaid against the said steamer Capitol, her tackle, apparel, or furniture, or any part of said claim; that it will also pronounce against said libel, and decree a restoration of the said steamer to these respondents, and to

condemned the libellants in costs, and otherwise right and justice towards these respondents to administer in the premises.

(Signed) GEO. S. LACY,
" R. A. UPTON,
Proctors.
ROB'T WOOLDRIDGE.

STATE OF LOUISIANA,
City of New Orleans.

Personally came and appeared before me, the undersigned authority, Tho's M. Ure, one of the respondents named in the foregoing answer, who being by me duly sworn, did depose and say, that he has heard read the foregoing answer, and knows the contents thereof; and that the facts therein stated, and the articulations therein made, are true to the best of his knowledge, information, and belief.

(Signed) THO'S M. URE.

Sworn to and subscribed before me, this 26th day of Dec'r, 1855.

(Signed) ROB'T M. LUSHER,
U. S. Com'r.

UNITED STATES DISTRICT COURT.

Sitting in admiralty.

Amended Answer.—Dec'r 29th, 1855.

And now comes before the honorable court Thomas M. Ure, and for himself and his co-proprietors and claimants, he articulates and propounds—

That in the several answers filed in the above-entitled and numbered causes, this respondent erroneously articulated and affirmed that a portion of the account referred to in the libels of the aforesaid causes was furnished at Jefferson, in Indiana, and the remaining portion at Louisville, in the State of Kentucky; whereas, in truth and in fact, and he so now articulates the materials, and labor that were furnished were furnished entirely at the port of Louisville.

Wherefore he prays that the articulation hereinabove made may be received as an amendment to that contained in the original answer.

LACY, UPTON & WOOLDRIDGE,
Proctors.

STATE OF LOUISIANA,
City of New Orleans.

Thomas M. Ure, being duly sworn, doth depose and say that the foregoing is true to the best of his knowledge, information, and belief.

(Signed) THOMAS M. URE.

Sworn to and subscribed before me, the 29th day of December, A. D. 1855.

N. R. JENNINGS, *Clerk.*

UNITED STATES DISTRICT COURT.

In admiralty.

November term, 1855.—Stated sessions.

MONDAY, *February* 11*th*, 1856.

The court having met: Present, Hon. T. H. McCaleb.

Hearing and submission of exceptions to jurisdiction.

ROACH & LONG AND OTHERS
vs.
STEAMER "CAPITOL." } 7089.

Claimants' exceptions to the jurisdiction came regularly up for hearing—Geo. S. Lacey, esq., appearing for the claimants, and T. B. Hart, esq., with H. Marr, esq., for the libellants. The nature of the exceptions having been explained, the claimants offered and read in evidence the following documents on file:

1st. Roach & Long's contract of May 10th, 1854.

2d. Enrollment of boat at Louisville, Ky., Jan'y 3d, 1855.

3d. Testimony of Wm. Gay, (subject to exceptions.)

4th. Petition of Roach & Long, in 4th dist. court of N. O., Louisiana.

The libellants admit that this action in the 4th dist. court was founded on the same cause of action as is the present suit; stating, however, that the suit there was discontinued before the libel here was filed.

5th. Transfer, 17th Febr'y, 1855, of 15-60th of boat, by Jas. H. Ure.

6th. Transfer, 21st Ap'l, 1855, of 45-60th of boat, by Jas. H. Ure.

7th. Roach & Long's bill, settled January 2d, 1855.

With oral testimony of T. B. Hart proving signature. The libellants offered and read in evidence, subject to exceptions, the—1. Depositions, *de bene esse*, of Robt. Hughes and S. Watkins, with exhibits; 2. The enrollment, Jan'y 16th, 1855, of st. "Capitol" at New Orleans; and also the draft annexed to the libel.

Exceptions submitted.

Evidence for Claimants—Filed Feb'y 11th, 1856.

Libellants' contract with Jas. H. Ure, May 10th, 1854.

Articles of agreement made, concluded, and agreed upon between Roach & Long, of the first part, and *Campt.* J. H. Ure, of the

second part, witnesseth: That the said party of the first part do agree and bind themselves to build for the said party of the second part two steam-engines of the following size, viz: two cylinders, 30 in. diameter, 8 feet stroke, popet valves, and bright finish, with male and female valves; five boilers, 40 in. diameter, and 28 feet long, with flat heads and two flues to each boiler, and No. 2 iron; wrought-iron steam drum, 20 in. diameter, and wrought-iron stand-pipe aft of boilers, 18 feet in diameter; doctor engine and doctor boiler, fire front, grated bars, and four bilge pumps, with attachments to doctor, (copper pipe for bilge pumps excepted;) main shaft 17 in. journal, with 3 flanges to each shaft, and 20 arms to each flange, and two stamps to each arm, with all flange bolts and tie bolts for machinery and cylinder timbers; chimneys 60 in. diameter, and from 50 feet from hurricane deck to have beads every 8 feet apart, and small articles on the top. The iron in chimneys, breeching, and fire-bed to be of the usual or customary thickness for such machinery. Fire-bed to be suspended with all guy rods and fastenings for same; scape-pipe of the customary size and height; mud receiver to be furnished forward under boiler. All to be made of the best material, and executed in a good, substantial, and workmanlike manner, put upon board the boat at the Louisville wharf, all complete and steam raised, for and in consideration of the sum of seventeen thousand five hundred dollars. Terms herein expressed: one thousand dollars to be paid in hands, the receipt of which is hereby acknowledged; seven thousand seven hundred and fifty dollars to be paid from time to time as the work progresses; the balance in three equal payments of five, seven, and nine months, approved acceptances, with the privilege of renewing the 9 months' acceptance for 3 months longer from its maturity. The said second party do agree to have the said acceptances endorsed on the insurance policy for the benefit of the said first party in case of loss.

The machinery to be completed on or before the 10th day of October next, provided there may be no failure on the part of the hull builder to deliver the hull.

Given under our hands at Louisville, Ky., this 10th day of May, 1854.

ROACH & LONG,
(Signed) JAMES H. URE.

Present—R. HUGHES.

2. *Enrolment of Boat, at Louisville, Ky., 3d Jan'y*, 1855. (See page 62.)

2. Testimony of Wm. Gay, read in evidence for claimants February 11th, 1856.

SATURDAY, *February 2d*, 1856.

According to an order of court this day entered in the above-entitled cause, directing the testimony to be taken before N. R.

Jennings, U. S. commissioner, in behalf of the respondents, the following-named witness appeared, and being duly sworn, testified as follows, to wit:

Wm. Gray states, that being shown a book, marked A, by the commissioner, he recognises it as the receipt-book of Captain Ure for the steamer "Capitol," and being shown the signatures to the receipts therein, he recognized them as the genuine signatures of the parties, to wit: J. M. Monohan, Wright and Bridgeford, H. McClaran & Co., Roach & Long, and all the signatures to the various receipts therein having been carefully examined by him, witness states that he acted as agent of Captain Ure of the steamboat "Capitol," and that he received the moneys and disbursed the same for the building of said boat; and having examined the accounts in the book marked A, as made up between Captain Ure and the aforesaid parties, libellants herein, he believes them to be true and correct. States that he left Louisville for New Orleans in December, 1854, and that the steamboat Capitol was then pretty nearly completed; she could have raised steam at the time, but there was not water enough to carry her over the falls. All the items set forth in the various bills contained in the book marked A referred to were furnished before she left the port of Louisville.

States that nearly all the cabin was built by Mr. McClaran in the State of Indiana; the largest proportion was built there.

Cross-examined.

Witness being asked, states that he knows the signatures of Wright and Bridgeford, Monohan, Roach & Long, from having seen them sign their names.

States that he was on board the steamer "Capitol" more than a dozen times, and now recollects that steam was up on her before witness left for New Orleans.

Witness knew at that time that Captain Ure was a citizen of the State of Louisiana.

Proctors for respondents here object to this testimony.

Witness has understood from Captain Ure, within the past two months, that the boat was making money, and that if the creditors would give him time, he would be able to pay all his debts. Witness supposes that he, Captain Ure, had reference to the claims now sued upon, together with other outstanding debts.

Upon witness suggesting to Captain Ure the expediency of selling an interest in the steamer "Capitol," for the purpose of paying the debts, Captain Ure replied that he wanted to sell, but the parties in the city were not ready to purchase; thinks that Captain Ure mentioned Capt. Leathers, of the steamb't Natchez, as a person who wished to purchase.

Witness has never heard Capt. Ure say that he was still a part owner of the s't "Capitol."

All the above testimony is objected to by the proctors for respondents, upon the ground that there is no articulation in the libel contained which would authorize the admission of the evidence, and upon the further ground that the libellants are not conforming themselves to a cross-examination, but are making the witness their own, which can be done only by offering him as their witness.

(Signed) WM. GAY.

Taken in presence of T. B. Hart, esq'r, for lib'ts, and George S. Lacy, and R. H. Upton, esq'r, cl'mts; certified at New Orleans, this 2d Feb'y, 1856.

By (Signed) N. R. JENNINGS,
U. S. Comm'r.

Petition.—In evidence for claimants, and filed 11th Feb'y, 1856.

To the honorable the judge of the 4th dis't court of New Orleans:

The petition of Roach and Long, a commercial firm, domiciled and doing business in the city of Louisville, State of Kentucky, and composed of Bryan Roach and Dennis Long, respectfully shows—

That James H. Ure, Wm. Chapman, John Chapman, D. Stonaker, Alex'dr Porché, G. Mengis, and Thomas Ure, all residents of this city, and owners of the steamboat called the "Capitol," are justly indebted to them "in solido," in the sum of twenty-nine hundred and fifty-two $\frac{48}{100}$ dollars, with interest at the rate of six per cent. per annum thereon, from the 5th day of October, 1855, as will fully appear from the draft and protest annexed, and made part of this petition.

Petitioners allege amicable demand and payment refused; that said boat is engaged in carrying freight and passengers for hire to and from this port. Wherefore they pray that said Ure and others, owners of said boat, be cited and condemned "in solido" to pay the said sum of $2,952 48, with interest, as above claimed, and costs, and for all further and general relief.

(Signed) T. B. HART, *Att'y.*

A true copy; clerk's office, 4th dis't court, 1st Dec'r, 1855.

(Signed) M. H. FLANAGAN,
D'y Clerk.

Claimants' Evidence.—Feb'y 11th, 1856.

Transfer, 17th Feb'y, 1855, of 15-60th of "Capitol" by T. H. Ure to Wm. Chapman and others.

Know all men by these presents, that I, James H. Ure, of New Orleans, State of Louisiana, the true and only owner of the steamboat called the "Capitol," of New Orleans, burthen four hundred

forty-eight and 80-95th tons, for and in consideration of the sum of fifteen thousand dollars to me paid by Wm. Chapman, in the proportion of 2-60, for the sum of two thousand dollars; John Chapman 2-60, for the sum of two thousand dollars; David Stonaker 4-60, for the sum of four thousand dollars; Alex. Porché 3-60, for the sum of three thousand dollars; Gerhard Mengis 2-60 for the sum of two thousand dollars; the receipt whereof is hereby acknowledged, have, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said purchasers of said steamboat "Capitol," of New Orleans, *is* the aforesaid proportions, together with all and singular as aforesaid proportion her masts, yards, sails, rigging, anchors, cable, boats, tackle, apparel, and appurtenances. Which said vessel is registered in the port of New Orleans in the words following, to wit:

No. 15. Enrollment permanent.

Enrollment in conformity to an act of the Congress of the United States of America, entitled An act for enrolling and licensing ships or vessels to be employed for the coasting trade, and further is and for regulating the same. James H. Ure, of the city of New Orleans, State of Louisiana, having taken or subscribed the oath required by the said act; and having sworn that he is a citizen of the United States, sole owner of the ship or vessel called the "Capitol," of New Orleans, whereof James H. Ure is at present master, and as he hath sworn is a citizen of the United States, and the said ship or vessel was built at Louisville, State of Kentucky, in the year 1855, now surrendered, being temporary property [of] the same; and said enrollment having certified that the said ship or vessel has one deck and no mast, and that her length is two hundred twenty-four feet inches, her breadth thirty-two feet inches, and that she measures four hundred forty-eight and 89-100 tons; that she is a steamboat, has cabin on deck, side-wheels, plain stern and head, depth 6½ feet; and the said James H. Ure having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said steamboat has been duly enrolled at the port of New Orleans, the 16th day of January, in the year of our Lord one thousand eight hundred and fifty-five, to have and to hold the said steamboat of New Orleans, in aforesaid proportion, unto the said purchasers, their executors, administrators, and assigns, forever; and I, the said James H. Ure, for myself, my heirs, executors, administrators, and assigns, that at the execution of these presents, I am the true and lawful owner of the said steamboat "Capitol," of New Orleans, and appurtenances, and that I now have full right and authority to sell and dispose to the same, freed from and cleared of all claims, incumbrances, or demands whatsoever.

In witness whereof, I have hereunto set my hand and seal, at the

city of New Orleans, the 17th day of February, in the year of our Lord one thousand eight hundred and fifty-five.

Signed, sealed, and delivered in the presence of—

(Signed) L. A. DESFORGES,
PH. CHARBONNET,
(Signed) JAMES H. URE,
DAVID STONAKER,
GERHARD MENGIS,
THOMAS M. URE,
ALEXANDER PORCHE.

Presented at the custom house of New Orleans, the 7th February, 1855, 12 o'clock p. m.

DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, 31*st January*, 1856.

I, John W. Hincks, deputy collector of the customs for the district and port of New Orleans, do hereby certify the above to be a true copy of the records on file in this office.

Given under my hand and seal of office, at the custom-house of New Orleans, the day and year above written.

J. HINCKS.

Enrollment, No. 63.

Permanent enrollment. In conformity to an act of the Congress of the United States of America, entitled "An act for enrolling, licensing ships or vessels to be employed on the coasting trade and fisheries, and for regulating the same," Wm. Chapman, of the city of New Orleans, State of Louisiana, owner of 47-60th, having taken or subscribed the oath required by the said act, and having sworn that he, together with John Chapman, owner of 2-60, David Stonaker 4-60, Alex. Porché 3-60, Gerhard Mengis 2-60, and John M. Ure 2-60, all of same place, and citizen of the United States, sole owner of the ship or vessel called the Capitol, of New Orleans, whereof Thomas M. Ure is at present master, and as he hath sworn, is a citizen of the United States, and the said ship or vessel was built at Louisville, State of Kentucky, in the year 1855, as per enrollment No. 33 I, at the port, on the 17th day of February, 1855, now surrendered property charged in port; and said enrollment having certified that the said ship or vessel has one deck and no mast, and that her length is two hundred twenty-four feet inches, her breadth thirty-two feet inches, her depth six feet six inches, and that *the* measures four hundred forty-eight and 80-95th tons; that she is a steamboat, has cabin on deck, side-wheels, and plain stern and head; and the said William Chapman having agreed to the description and admeasurement above specified, and sufficient security having been given, according to

said act, the said steamboat has been duly enrolled at the port of New Orleans.

Given under our hand and seal, at the port of New Orleans, this 21st day of April, in the year one thousand eight hundred and fifty-five.

DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, 19*th January*, 1856.

I, John Hincks, deputy collector of the customs of the district and port of New Orleans, do hereby *certified* the *written* to be a true copy of the records on file, and given under my hand and seal of office, at the custom-house of New Orleans, the day and year as above written.

JOHN HINCKS.

Claimants' Evidence, February 11*th*, 1856.

Transfer, April 21st, 1855, of 45-60th of "Capitol" by J. H. Ure to Wm. Chapman.

Know all men by these presents, that I, James H. Ure, of the city of New Orleans, State of Louisiana, owner of 45-60 of the steamboat called the "Capitol," of New Orleans, burthen four hundred forty-eight and 80-95th tons or thereabout, for and in consideration of the sum of forty-five thousand dollars to me in hand paid by Wm. Chapman, of same place, the receipt whereof is hereby acknowledged, have, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said Wm. Chapman said 45-60 of said steamboat "Capitol," of New Orleans; together with 45-60 three-quarter of all and singular her masts, yards, sails, rigging, anchors, cable, boats, tackle, apparel, and appurtenances; which said vessel is registered in the port of New Orleans in the words following, to wit: No. 33, enrollment, permanent enrollment. In conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade, and for *chere* as, and regulating the same," James H. *the*, of the city of New Orleans, State of Louisiana, owner of 45-60, having taken or subscribed the oath required by the said act, and having sworn that he, together with Wm. Chapman, owner of 2-60, Joh. Chapman 3-60, David Stonaker 4-60, Alse Porche 3-60, Gerhard Mengis 2-60, and Thos. M. Ure 2-60, all of same place, and are citizens of the United States, sole owners of the ship or vessel called the "Capitol," of New Orleans, whereof James H. Ure is at present master, and, as he hath sworn, is a citizen of the United States; and the said ship or vessel was built at Louisville, State of Kentucky, in the year 1855, as per enrollment No. 15 I, at the port, on the 16th day of January, 1855, now surrendered property charged in port; and

said enrollment having certified that the said ship or vessel has one deck, no mast, and that her length is two hundred and seventy-four feet inches, her breadth thirty-two feet inches, and that she measures four hundred forty-eight 80-95 tons; that she is a steamboat, has cabin on deck, side wheels, and plain stern and head, depth six feet six inches; and the said James H. Ure having agreed to the description and admeasurement above specified, and sufficient security having [been] given, according to the said act, the said steamboat has been duly enrolled at the port of New Orleans.

Given under our hands and seals, at the port of New Orleans, 19th day of February, in the year of our Lord one thousand eight hundred and fifty-five.

To have and to hold the said 45-60 on three-quarter of said steamboat "Capitol," of New Orleans, *would* the said Wm. Chapman, his executors, administrators, and assigns, forever. And I, the said James H. Ure, for myself, my heirs, executors, and administrators, do hereby covenant and agree to and with the said Wm. Chapman, his executors, administrators, and assigns, that at the execution of these presents I am the true and lawful owner of the said three-quarter of said steamboat "Capitol" and appurtenances, and I now have full right and authority to sell and dispose of the same, freed from and cleared of all claims, incumbrances, or demands whatsoever.

In witness whereof, I have hereunto set my hand and seal, at the city of New Orleans, the twenty-first day of April, in the year of our Lord one thousand eight hundred and fifty-five.

(Signed) W. CHAPMAN,
JAMES H. URE.

Signed, sealed, and delivered in the presence of—

(Signed) L. H. DESFORGES,
" F. DUPLESSIS.

Presented at the custom-house of New Orleans the 25th April, 1855, at 2 o'clock, p. m.

DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, January 31st, 1856.

I, John H. Hincks, deputy collector of the customs for the district and port aforesaid, do hereby certify the foregoing to be a true copy from the original on file in this office.

Given under my hand and seal, at the custom-house of New Orleans, the day and year as above written.

J. W. HINCKS.

Enrollment.

No. 63. Permanent enrollment. In conformity to an act of the Congress of the United States of America, entitled "An act for

enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," Wm. Chapman, of the city of New Orleans, State of Louisiana, owner of 49-60th, having taken or subscribed the oath required by the said act, and having sworn that he, together with John Chapman, owner of 2-60th, David Stonaker 4-60th, Alx. Poché 3-60th, Gerhard Mengis 2-60th, and Thos. M. Ure 2-60th, all of same place, are citizens of the United States, sole owners of the ship or vessel called the "Capitol," of New Orleans; he hath sworn is a citizen of the United States, and the said ship or vessel was built at Louisville, State of Kentucky, in the year 1855, as per enrollment No. 33, issued at this port on the 17th day of February, 1855, now surrendered property charged in port; and the said enrollment having certified that the said ship or vessel has one deck and mast, and that her length is two hundred twenty-four feet inches, her breadth thirty-two feet inches, her depth six feet six inches, and that she measures four hundred forty-eight and 80-95 tons; that she is a steamboat, has cabin on deck, side wheels, plain stern and head; and the said Wm. Chapman having agreed to the description and admeasurement above specified, and sufficient security having been given according to said act, the said steamboat has been duly enrolled at the port of New Orleans.

Given under our hand and seal, at the port of New Orleans, this twenty-first day of April, in the year one thousand eight hundred and fifty-five.

DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, December 10th, 1855.

I, John W. Hincks, deputy collector of the customs for the district and port of New Orleans, do hereby certify the *written* to be a true copy of the records on file in this office.

Given under my hand and seal of office, at the custom-house of New Orleans, the day and year above written.

J. W. HINCKS.

U. S. DIS'T COURT,
East. District of Louisiana.

ROACH & LONG
vs.
STEAMER CAPITOL. } In admiralty. No. 7089.

In evidence for claimants.—Filed Feb'y 11th, 1856.

Roach & Long's Bill.

LOUISVILLE, KENTUCKY, 1854.

Steamboat "Capitol" to Roach & Long.

1854, Oct. 13. To 2 steam-engines, boilers, &c., per contract..... $17,500 00

Nov. 9.	Steam blowers.....		$75 00	
"	4 stuffing boxes, 86 a 5.....		4 30	
"	Drilling same.....		1 00	
18	blocks, 86 a 5.....		15 90	
"	Drilling and fitting up do...		1 00	
"	4 bolts in same.....		60	
"	1 Sampson, 109 a 5.....		5 45	
"	Drilling and fitting up do..		50	
"	Screw and levers for same.		4 50	
"	Drayages.....		25	
Dec. 20	4 horses' holds...	181 a 5.	9 05	
"	4 stuffing boxes,			
"	Drilling same.....			
" 23	2 horses' holds, 55 a 5.....		2 75	
" "	Drilling same.....		75	
				$17,622 55
	Deduction			5 30
				$17,617 25

Jan'y 2, '55, settled.

(Signed) ROACH & LONG.

Cr.

1854, May 10th.	By cash on ac.....		$1,000 00	
July 8th.	do.		1,000 00	
Aug't 7th.	do.		1,000 00	
" 22	do.		1,000 00	
Sept. 28	do.		1,000 00	
Oct. 13	do.		1,000 00	
Nov'r 15	do.		1,000 00	
" 22	do.		1,200 00	
Dec'r 9	do.		500 00	
" "	Insurance		50 00	
Jan'y 2	Chimney guy		24 80	
" "	Accep. a 5 m'a.....		2,947 48	
" "	do. a 7		2,947 49	
" "	do. a 9		2,947 48	
				$17,617 25

Jan'y 2, '55, sealed.

(Signed) ROACH & LONG.

Note.—Signature of Roach & Long to original believed by libellants' proctor, to be genuine.

In court, 11th Feb'y, 1856.

Libellants' Evidence.

Offered in evidence for libellants, (claimants excepting,) and read Feb'y 11th, 1856.

Depositions of Robert Hughes and S. Watkins for libellants, de bene esse.

1. *Depositions of Rob't Hughes.*

The deposition of Robert Hughes, taken before the undersigned, commissioner of affidavits and of the United States in and for the 8th circuit and Kentucky district, duly commissioned, qualified, and acting as such, in the city of Louisville, in said district, on the 31st day of Dec'r, 1855, at the office of Pilcher & Hauser, in said city, to be read as evidence in a suit depending in the U. S. district court for the southern district of Louisiana, wherein Roach & Long are plaintiff, and the steamer Capitol is defendant. The said deponent being just duly and carefully examined and cautioned and sworn to tell the whole truth, doth depose and say, that he lives in the city of Louisville, Kentucky, a greater distance than one hundred miles from the city of New Orleans, and from the place of trial of the above-entitled cause; that he is of lawful age, being now about thirty years old; that he was clerk for the plaintiffs, Roach & Long, in the year 1854, and at the time said plaintiffs made the two steam-engines, boilers, &c., (as charged in the bill of particulars in ac. stated, herewith filed and made part of my deposition, marked R. H.,) for the steamer Capitol; that said contract for said work was made with Captain Ure, and the work was put up on said steamer to his order, and delivered to him. Captain Ure made the contract, and did all the business in and about the building of said boat; said boat did not receive her name, until about the time she was painted and finished off. The account, under the contract, was opened in the name of Capt. Ure, who was the acting and contracting man, and the owner of the boat, and deponent knew of no other owner, and heard of none pending the building of said boat.

The work was done and the materials furnished under the contract, and *above* it, as charged in ac., in the city of Louisville, in the State of Kentucky, and at the wharf in said city of Louisville.

A true copy of said contract, made out by myself from the contract book of the plaintiffs, I file herewith, and make it part of this my deposition. It is dated the 10th of May, 1854, and signed Roach & Long, and James H. Ure. The firm of Roach & Long is composed of Bryan Roach and Dennis Long. They are engine builders in the city of Louisville, and were so at the date of the contract. The steamer Capitol was finally completed in and about the first of January, 1855, and the plaintiffs and def'ts made settlement on the second day of Jan'y, 1855. Items of materials were furnished to said boat on the 23d Dec'r, 1804. All the work done, materials furnished, was done and furnished in the city of Louisville, and State of Kentucky. I file, as part of this deposition, the registry of the boat; and further saith not.

(Signed) ROBERT HUGHES.

Deposition of S. Watkins.

Also the deposition of Simon Watkins, taken at the same time and place, in the same behalf, on the same suit, before the same officer:

Deponent being of lawful age, personally known to the officer, and first carefully examined, *contained*, and sworn to speak the whole truth, doth depose and say:

Simon Watkins says, that he lives in the city of Louisville, Kentucky, more than one hundred miles from the city of New Orleans, and from the place of trial of the entitled cause.

Further, witness says, I was present when the parties made the contract hereinafter for the engines and boilers, a copy of which is filed, and made part of the deposition of Robert Hughes. I did not write the contract, but remember its terms, and say that the account of the work, and charge for it on the account of Roach & Long, made part of the deposition of said Hughes, are correct. The items charged on said account are also correct. As the agent and *and* friend of the defd't, James H. Ure, I made the settlement between him and plaintiffs, and drew the bills by which said account was settled and closed, and admitted correct; the work on said boat was done and finished on the 5th of Jan'y, 1855, and on that day, I think, the settlement of the account herein was made, and the bills to close it were given, and the boat left on the 7th Jan'y, 1855. I know that the contract for building said boat were made by def't, Ure, and in his name. He was the acting and contracting man, and I know from him that he was the sole owner of said boat, and left Louisville as such. The said boat was *finish* at Louisville, Kentucky, and all the work that was done, and all the materials furnished by plaintiffs, were done and furnished in the said city; and further saith not.

(Signed) SIM. WATKINS.

UNITED STATES OF AMERICA,
8th Circuit, &c., Kentucky District, City of Louisville.

I, William S. Pilcher, a commissioner of affidavits, &c., of the United States of America, duly appointed, in and for said circuit and district, and qualified and acting as such, do certify, that at the request of Roach & Long, plaintiffs, I caused the aforenamed witnesses, Robert Hughes and *Simons* Watkins, deponents in the foregoing depositions, to come before me, at the time and place mentioned in the caption thereto, because the said witnesses live more than one hundred miles from the city of New Orleans, and from the place of the pendency of said suit of said Roach & Long against the steamer Capitol, as they have stated, and as I believe; I did not cause any notice to be given to the adverse party of the time and place of taking said depositions, because the said adverse

party does not reside, as I know or believe, within one hundred miles of the place of taking said depositions, nor has said party agent or attorney known to me within that distance. That said witnesses were each by me carefully examined, cautioned, and sworn then and there to testify the whole truth, and that said depositions were wholly reduced to writing by me in the presence of said witnesses, and that each of them then and there in my presence subscribed his depositions.

That I am not counsel or attorney for either of the parties, nor interested in the event of the cause. All of which is certified to said court as the cause wherefore this deposition is taken, and for the manner in which it is done.

Given under my hand as commissioner aforesaid, I having no seal of office at the time and place stated in the caption of said deposition.

(Signed) WILLIAM S. PILCHER,
Commiss'r U. S. A., K'y Dis.

Louisville, Dec'r 31st, 1855.

Copy of Original Contract annexed to foregoing Depositions.—Filed Jan'y 10th, 1856.

Articles of agreement made, concluded, and agreed upon, between Roach & Long, of the first part, and Capt. J. H. Ure, of the second part,

Witnesseth: That the said parties of the first part do agree and bind themselves to build for the said party of the second part, two steam-engines of the following size, viz: two cylinders 30 feet in diameter, 8 feet strokes, popet valve, and bright finish, with male and female valves; five boilers forty feet in diameter, and 28 feet long, with flat heads and two flues to each boilers, and No. 2 iron; wrought-iron staunch drum, 20 in. diameter, and wrought-iron stand pipe aft of boilers, 18 in. diameter; doctor engines, doctor boilers, fire front, grated bars, and four bilge pumps, with attachments to doctor, (copper pipe for bilge pumps excepted,) main shaft 17 in. journal, with three flanges to each shaft, and 20 arms to each flange, and two stamps to each arm, with all flange bolts and tie bolts for machinery and cylinders' timber; chimney 60 in. diameter, and 50 feet from hurricane deck to have beads every 8 feet apart, and small articles on top. The iron in chimneys, *britching*, and fire bed to be of the usual or customary thickness for such machinery, fire bed to be suspended with all guy rods and fastenings for same, scape pipe of the customary size and height; mud receiver to be furnished forward under boiler; all to be made of the best materials, and executed in a good, substantial, and workmanlike manner, put up on board of the boat at the Louisville wharf, all complete and steam raised, for in consideration of the sum of seventeen thousand five hundred dollars. Terms herein expressed, one thousand dollars to

be paid in hands, the receipt of which is hereby acknowledged, seven thousand seven hundred and fifty dollars to be paid from time to time as the work progresses, the balance in three equal payments of five, seven, and nine months, approved acceptances, with the privilege of renewing the nine months' acceptances for 3 months longer from its maturity. The said second party do agree to have the acceptance endorsed on the insurance policy for the benefit of the said first party in case of loss. The machinery to be completed on her before the 10th day of October next, provided there may be no failure on the part of the hull builder to deliver the hull.

Given under our hands at Louisville, by this 10th day of May, 1854.

(Signed) ROACH & LONG,
" JAMES H. URE.

Present—R. HUGHES.

Filed Jan'y 10th, 1856.

Enrollment annexed to foregoing.—Read in evidence for claimants, 11th Feb'y, 1856.

Enrollment in conformity to an act of Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed on the coasting trade and fisheries, and for regulating same."

James H. Ure, of New Orleans, State of Louisiana, having or subscribed the oath required by the said act, and having sworn that he is a citizen of the United States, sole owner of the ship or vessel called the "Capitol," of , whereof James H. Ure is at present master, and as he hath sworn is a citizen of the U. S., and that the said ship or vessel was built at Louisville, State of Kentucky, in the year 1855, as per certificate of admeasurement of this date:

And said certificate of admeasurement having certified that the said ship or vessel has one deck and no mast; that her length is 224 feet, her *breath* is thirty-two feet, and her depth is 6½ feet, and she measures four hundred and forty-eight 80-95 (448 80-95 ton ;) and that she is a steamboat, has cabin on deck, side wheels, and plain head ; and said James H. Ure having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said steamboat has been duly enrolled at the port of Louisville, this 3d January, 1855.

(Signed) HENRY N. SANDS,
Surveyor of Customs.

CUSTOM HOUSE, PORT OF LOUISVILLE, *Dec'r 31st*, 1855.

[SEAL.] I hereby certify the above to be a correct transcript from the record at this office, under seal of office.

(Signed) HENRY U. SANDS,
Surveyor of Customs.

Account annexed to Depositions.

LOUISVILLE, KENTUCKY.

Steamboat "Capitol" and owners to Roach & Long, Dr.

1854, Oct. 13.	To 2 steam-engines, boilers, *and* per contract.....		$17,500 00	
Nov. 9.	Steam blowers.....		75 00	
"	4 stuffing boxes, 86 lbs. a 5c.		4 30	
"	Drilling same and chipping.		1 00	
17	1 heading block, 318 lbs. a 5 c.....		15 90	
"	Drilling and fitting up same.		1 00	
"	4 bolts in same.....		60	
"	1 Sampson, 109 lbs. a 5c....		5 45	
"	Drilling and fitting up same.		50	
"	Screw and lever for same...		4 50	
"	Drayage.....		25	
Dec. 20	4 horses' holds... } 4 stuffing boxes, }	181 lbs. a 5 c.....	9 05	
"	Drilling same.....		1 50	
23	2 horses' holds, 55 lbs. a 5 c.		2 75	
"	Drilling do.....		75	
				$17,622 55

1854.	Cr.				
May 10th.	By cash on ac.	$1,000 00			
July 8th.	" "	1,000 00			
Aug't 7th.	" "	1,000 00			
" 22	" "	1,000 00			
Sept. 28	" "	1,000 00			
Oct. 13	" "	1,000 00			
Nov'r 15	" "	1,000 00			
" 22	" "	12,000 00			
Dec'r 9	" "	500 00	$8,700 00	$17,622 55	
Dec'r 30th	By stuffing boxes reb't.....	5 30			
" "	Insurance on boat at wh'f.	50 00			
1855.					
Jan'y "	" Allowance on chimney braces	24 80			
June 5	" cash.....	2,947 48	$3,027 58	11,727 58	
					$5,894 97

ROACH & LONG
vs.
STEAMER "CAPITOL." } In admiralty, No. 7089.

Libellants' Evidence.

Enrollment of boat at New Orleans, La., 16th Jan'y, 1855, in evidence. Feb'y 11th, 1856.

Enrollment No. 15. Permanent enrollment. In conformity to an act of the Congress of the United States of America, entitled An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same, James H. Ure, of the city of New Orleans, State of Louisiana, having taken or subscribed the oath required by the said act, and having sworn that he is a citizen of the United States, sole owner of the ship or vessel called the "Capitol," of New Orleans, whereof James H. Ure is at present master, and as he hath sworn, is a citizen of the United States, and the said ship or vessel was built at Louisville, State of Kentucky, in the year 1855, as per enrollment No. 4, issued at the port of Louisville, on the 3d day of January, 1855, now surrendered, being temporary; and said enrollment having certified that the said ship or vessel has one deck, no mast, and that her length is two hundred twenty-four feet inches, her breadth thirty-two feet inches, her depth six feet six inches, and that she measures four hundred forty-eight and $\frac{80}{95}$th tons; that she is a steamboat, has cabin on deck, side wheels, plain bows and head; and the said James H. Ure having agreed to the description and admeasurement above specified, and sufficient security having been given according to said act, the said steamboat has been duly enrolled at the port of New Orleans.

Given under our hand and seal, at the port of New Orleans, this 16th day of January, in the year one thousand eight hundred and fifty-five.

DISTRICT AND PORT OF NEW ORLEANS,
Collector's Office, February 1st, 1856.

I, John W. Hincks, deputy collector of the customs for the district and port aforesaid, do hereby certify the within to be a true copy taken from the records on file in this office.

[SEAL.] Given under my hand and seal of office, at the custom-house of New Orleans, the day and year above written.

J. W. HINCKS,
D'y Collector.

UNITED STATES DISTRICT COURT,
Eastern District of Louisiana.

February term, 1856. Stated sessions. Tuesday, March 4th, 1856.

The court met 10 a. m. Present, Hon. Theo. H. McCaleb.

ROACH & LONG
vs.
STEAMER CAPITOL. } In admiralty, No. 7092.

Judgment sustaining Jurisdiction.

The court having carefully examined, reviewed, and considered the grounds urged by the claimants herein, in support of their exceptions to the jurisdiction—

It is now ordered, for the reasons rendered in the written opinion of the judge, that the exceptions be overruled, and the case brought to trial on the merits.

UNITED STATES DISTRICT COURT.

ROACH & LONG and others
vs.
STEAMER CAPITOL. } In admiralty, No. 7089.

Decision on exception to Jurisdiction.—Rendered March 4th, 1856.

In this case it appears from the evidence that the steamboat was built and furnished at Louisville, in the State of Kentucky; when [she] was finally completed, and ready to perform voyages in the particular trade for which she was designed, the unsettled accounts which were due for her construction and equipment were closed by drafts drawn on James H. Ure, and made payable in the city. These drafts were duly accepted, and are yet unpaid. They were duly accepted, and are yet unpaid. They are held by the parties to whom they were originally due for the work done, and supplies furnished in the construction and equipment of the boat.

These parties claim to have a lien upon the boat for the satisfaction of the drafts, by virtue of the laws of Kentucky. The law of that State, which is particularly relied on, declares that "mechanics, tradesmen, and others shall have a lien for work, supplies, materials, stores and provisions done or furnished on or towards the building, repairing, fitting, furnishing, or equipping the boat or vessel in this State, with a preference or priority therefor over any other debt of the owner, except to the officers and hands, and over all other liens thereafter created.

"When so done and furnished out of the State, there shall be a like lien therefor, which shall have precedence next after that given when done or furnished in this State; but if done or furnished out of the State subsequent to that done or furnished in this State, the liens shall be joint and equal. The liens thus given shall not be enforced against a purchaser without actual notice thereof, unless

suit be instituted within one year from the time the cause of action accrued, or unless notice thereof be endorsed or attached to the enrollment of the boat or vessel."

Sitting as a court of admiralty, I am called upon to enforce the liens created by the law of Kentucky. The right or power of this court to enforce any lien of a maritime nature, created by any other State than Louisiana herself, has been strongly contested. The action of the State tribunals, which have refused to recognize and enforce liens created by the legislation of other States, has been invoked as a rule by which my own judicial contract should be guided. My opinion, formed after much reflection, is, that the action of the courts of the United States should be confined to no such narrow restriction. In reference to the rights of property regulated by the law of the State within which a federal court administered justice, it is undoubtedly governed by that law; and if a law of another State is invoked which contravenes the policy of the legislation of the particular State within which its powers are exercised, it would be its duty to disregard the former, and uphold the latter. But, in matters of compact, I am aware of no principle of law which prevents it from recognizing and enforcing the rights of citizens of another State as promptly and effectually as it is bound to enforce the rights of a citizen within its immediate jurisdiction.

If a citizen of Kentucky claims here the recognition and enforcement of a lien of a maritime nature created by the laws of his State where the contract was made, I am unable to discover any valid reason why I should refuse to grant the same remedy which, sitting as a court of admiralty, I should be bound to accord to the possessor of a similar lien under the law of Louisiana. It has been the invariable rule in this court to enforce liens of a maritime nature created by the laws of other States of the Union, and I have never heard the legality of its action contested until the present time.

I shall adhere to the rule hitherto observed until otherwise directed by a higher tribunal. I consider it a rule founded in justice and a due regard to the legislation of the sister States of the Confederacy. The judges of the court of the United States are bound to take notice of the laws of the different States, and to give them their full force and effect when they apply. To refuse a remedy to the holder of a lien upon a steamboat or other vessel arising from work and labor performed upon such boat or vessel, or from the party having furnished materials and supplies to fit her for navigation, would be at once to place the numerous artisans employed in the construction of steamboats in the ports of Pittsburg, Cincinnati, and Louisville completely at the mercy of the owners of such boats in all cases where a credit might be granted. It will only be necessary for the owner to bring her out of a jurisdiction where the lien could be enforced, and keep her employed in the southern trade until the expiration of the time allowed by the local law for the continuance of the lien.

It is difficult, in a case like this, to separate the lien from the contract between the shipwright and the owner of the vessel. The very fact that such a security results from the labor of those persons employed in constructing and furnishing a vessel, is the strongest inducement to such persons to enter into the contract. There are very few boats built on the western waters which are paid for in cash. A large proportion of the costs of building must be defrayed by the profits earned by the boats after they engage in trade.

Hence, for the security of the builders, the lien given by the laws of Kentucky continued for one year. In the present case, the libel was filed within the time fixed by the law, and even if we are to consider the boat as a domestic vessel, the lien must be regarded as attaching, at the date of the institution of the suit, and property cognizable by the court.

Thus far I have considered the case as if the boat were a domestic vessel, but the evidence shows that she was built for James H. Ure, a resident of New Orleans, and a citizen of Louisiana. She was designed for the southern trade, and since her construction, has been running in that trade. She is, therefore, to all intents and purposes, as to the port of Louisville, a foreign vessel. The lien in favor of those who built, equipped, and furnished her, must be regarded as valid, under the general admiralty law, and it is unnecessary to cite authorities to show that it is the particular province of this court to enforce it.

See testimony in case of John M. Monohan vs. "Capitol," (test cause.)

The execution and delivery of the drafts introduced in evidence did not destroy the lien. It did not in law nor in the understanding of the parties. The witness, Watkins, introduced on behalf of the libellants, states that the bills given by Ure were given simply to close the accounts, and in no case were they given to extinguish the lien created by the laws of Kentucky to secure the payment thereof, or in any manner to effect the lien of the mechanics, builders, and material men on said boat, and in all these cases it was distinctly understood that the lien was not affected by the bills given.

As a matter of law, it is well settled that if an exclusive personal credit has been given by material men, they cannot afterwards, upon any change of circumstances or opinion, resort to the ship; but, prima facie, the supplies are to be deemed to have been furnished on the credit of the vessel and owners, until the contrary is proved.

It has been held that the acceptance, as a conditional payment of a negotiable promissory note which had not been surrendered or tendered to be given up, was a waiver of the right to resort to an admiralty suit for satisfaction. If, however, the note was not taken as absolute payment, or is not by the local law of the State where the debt was contracted to be deemed to have been taken, and if

the creditor, at the hearing, offers to surrender it, the lien exists, and may be enforced in the admiralty. (12 Wheaton, 611–'2, Story, 455.)

In this case the acceptances of Ure are filed in court, and offered to be surrendered on the hearing. But it is further urged in argument that a court of admiralty cannot take cognizance of the claim of a builder for materials furnished and labor bestowed in the construction of a vessel which has not yet been employed in a maritime pursuit, although the local law might give him a lien on the vessel.

Claims of this nature have been held to be unquestionably within the admiralty jurisdiction. Read vs. the Hull of the New Brig, (1 Story, 244,) was a case of this description; and Mr. Justice Story, in maintaining jurisdiction, said: the brig is built and designed for maritime business and navigation upon the sea, and upon waters navigable from the sea, so that "her employment is clearly to be maritime, and the contract for the work and labor is for maritime purposes." A like jurisdiction was exercised upon the same ground by the late Judge Hopkinson, of the U. S. district court, for the eastern district of Pennsylvania, in the case of Harper vs. a New Brig, (Gilpin R., 473.)

The question whether the rights of these libellants can be enforced against a bona fide purchaser for a valuable consideration, without notice, is one which cannot properly be considered at this stage of the case.

It involves an examination of evidence which the parties have not yet had an opportunity of presenting to the consideration of the court.

It is clearly, therefore, a question to be determined when we come to consider the merits of the controversy.

The exceptions taken in this case must, for the reasons here given, be overruled.

UNITED STATES DISTRICT COURT,
Eastern District of Louisiana.

In admiralty.

February term, 1856.—Stated sessions.

FRIDAY, *March 14th.*

Court met at 10 a. m.: Pres't, Hon. T. H. McCaleb.

Submission of case on merits.

ROACH & LONG with others
vs.
STEAMER "CAPITOL." } No. 7089.

This cause, with others, being set down for hearing on the mer-

its, T. B. Hart, esq'r, appeared for the libellants, and George S. Lacy, esq'r, for the claimants, and by consent, the same was submitted.

February term, 1855.—Stated sessions.

TUESDAY, *March 25th*, 1856.

The court met at 10 a. m.: Present, Hon. T. H. McCaleb.

ROACH & LONG with others
vs.
STEAMER CAPITOL. } No. 7089, per curiam order.

The court being unable to decide these causes on the present pleading and evidence, orders that a day be fixed by the parties for the presentation of proof and argument on the point pleaded by the claimants in their answer, and denied by the libellants, to the effect that the present claimants were purchasers bona fide from James H. Ure, the original owner of the "steamer Capitol."

U. S. DISTRICT COURT,
East. Dis't of Louisiana.

ROACH & LONG with
John M. Monohan
and others
vs.
STEAMBOAT "CAPITOL."

Amended Libel.—Filed March 29th, 1856

To the Hon. the judge of the district court of the United States for the eastern dis't of Louisiana, in admiralty, sitting:

The supplemental and amended libel of John M. Monohan, residing in the city of Louisville, State of Kentucky, against the steamer Capitol, her tackle, apparel, and furniture in a cause of contract, civil and maritime; and thereupon said libellant alleges as follows, to wit:

That the testimony of William Chapman, a resident of the parish of St. James, in this State, and who is one of the claimants of said steamer Capitol, as appears by his answer filed herein, is material, in behalf of libellant herein. Wherefore libellant prays leave to file this amended and supplemental libel, and that said Chapman be cited to appear and answer, under oath and in writing, within the legal delays, the interrogatories hereto annexed, and that after due proceedings libellant have judgment as prayed for in his original

libel herein filed, and for all further and equitable relief in the premises.

T. B. HART & HENRY MARR,
Proctors.

Interrogatories annexed.

First interrogatory. Have you now or did you have on the 19th day of December, 1855, when this suit was instituted, or previous thereto, any interest as owner in the steamer "Capito?" If yea, state the nature and amount of said interest, from whom you acquired it, at what time you acquired it, and what consideration you paid for it.

Second. If you say you acquired an interest in said boat from James H. Ure, state whether or not you are now indebted to him for or on account of said boat, and if you are so indebted, state the amount of said indebtedness, and by what the same is evidenced.

Third. Was or not a counter letter given by you to James H. Ure on account of transfer to you of his interest in said boat, or did you give him any written obligation or bill of sale re-transferring said interest therein?

Fourth. If you say you paid no money, but gave other property in exchange for or as a consideration for your interest in said boat, what description of property was it, where is it situated, what is its value, and to whom did you deliver it?

Fifth. If you gave notes for your interest in said boats or other obligations, state to whom they are payable, their several amounts, where due, where they were executed, and what portion thereof you have paid.

Sixth. Was the transfer from James H. Ure to you real and bona fide, or was it "simulated," and made to protect the "Capitol" against the creditors of the "steamer Gipsey" formerly owned by said Ure?

Seventh. What relationship or connection exists between James H. Ure and yourself, and is he not your son-in-law?

Eighth. At the time you acquired your interest in the steamer "Capitol," were you not informed or did you not know that the claim of libellants and other claims for building and furnishing the boat were unpaid, and did not the boat pay a portion of said claims after the transfer from James H. Ure to you?

T. B. HART & HENRY MARR,
Proctors for Libellant.

Personally appeared T. B. Hart, who being sworn, declares that he is duly authorized to represent the libellants in this behalf, and that he verily believes the allegations of the foregoing amended bill to be true and correct.

(Signed) T. B. HART.

Sworn to and subscribed before me, this 29th day of March, A. D. 1856.

(Signed) N. R. JENNINGS,
Clerk.

U. S. DISTRICT COURT,
East. Dis't of Louisiana.

ROACH & LONG with John M. Monohan and others
vs.
STEAMBOAT "CAPITOL."

Answers of Wm. Chapman to amended Libel.—Filed April 18th, 1856.

In these causes, the claimant, William Chapman, comes before the court, and in answer to the interrogatories propounded to him in the above-entitled and numbered causes, he says:

Answer 1st. On or about the seventeenth day of February, 1855, I purchased from James H. Ure 9-60 of the steamer "Capitol;" and on the 21 day of April, 1855, I bought from the said Ure 45-60 of the said steamer, and continued to own the portions aforesaid of the said steamer up to and after the 19th day of December, 1855.

For that portion of the boat bought by me on the seventeenth day of February, 1855, I paid to the said Ure the sum of two thousand dollars cash; for that portion bought on the twenty-first day of April, I gave the sum of forty-seven thousand dollars, paid in my notes to my order, which I handed over to the said Ure.

Answer 2. The said Ure now holds the notes given by me for the payment of the said boat, (with the exception of two of them,) unless the same have been transferred by him. I cannot state where the said notes are. Whether or not I am indebted to the said Ure is a legal question, which I cannot answer under oath. The "Capitol," when sold to me, had in her worthless boilers, manufactured by Roach & Long of the city of Louisville, and on account of which worthlesness the said boilers have been subsequently condemned by the U. States officers. The bad and defective condition of such boilers has become known to me long subsequent to the sale at which I purchased. They were the means of stopping the said steamer from running at a busy season of the year, and caused the owners very heavy damages. Under such circumstances, it is impossible for me to say in what amount, if any, I am indebted for the price agreed to be paid.

Answer 3d. No counter letter was given, or any written obligation or bill of sale, re-transferring my interest in the said boat to the said Ure.

Answer 4th. I have already stated, in my first answer, the consideration given by me for the undivided interest which I acquired in the "Capitol."

Answer 5th. As near as I can recollect, there were 6 notes given by me, payable to my own order, and by me endorsed, and made payable in instalments of six months, to the best of my present recollection. They were made payable at the house of James Robb & Co. Capt. Ure was indebted to my children, and returned to me two of the notes, wishing to apply the same on account of such indebtedness; but as the boat was in a defective condition at the time of the sale, and much damage has been caused on account thereof, I am not willing to take the notes upon the terms offered. I deny my legal liability to pay the same.

Answer 6th. The sale was not simulated, but made "bona fide." I considered that I am acquiring the interest I professed to buy, and consequently gave my notes, in negotiable form, without counter letter, or the like. I have, as owner of the Capitol, been subjected to my pro rata of liability to the extent of thirty-five thousand dollars and upwards.

I do not recollect that the debts of the creditors of the steamer Gipsey had anything to do with my purchase, but do state that the boat was not bought by me to defraud any person whatever. I bought in good faith, with the hope that I might thereby be able to assist Capt. Ure.

Answer 7th. James H. Ure is my son-in-law.

Answer 8th. I did know, all the time of my purchase, of the existence of some western claims vs. Ure, on account of the Capitol; but had not the slightest knowledge or information of any lien or privilege upon the steamer. I bought her as free from all incumbrances. Capt. Ure may have paid something on account of these debts, but I never have, nor ever sanctioned such payments on my account. As one of the owners of the Capitol, never considered as liable for the debts of the Capitol, contracted previous to my purchase.

(Signed) W. CHAPMAN.

Sworn to and subscribed [before] me this 16th day of April, A. D. 1856.

(Signed) N. R. JENNINGS, *Clerk.*

UNITED STATES DISTRICT COURT,
Eastern District of Louisiana.

In admiralty. February term, 1856. Stated sessions.

TUESDAY, *April* 22, 1856.

The court met at 10 a. m. Present: Hon. T. H. McCaleb.

ROACH & LONG, with others,
vs.
STEAMER CAPITOL. } No. 7089. Rule on Wm. Chapman.

On motion of T. B. Heart, esq., proctor for libellants, it is ordered that Wm. Chapman, one of the claimants herein, show cause, on Saturday, the 26th inst., at 10 a. m., why, on the grounds herewith submitted, the interrogatories propounded to him in the supplemental libels should not be taken as confessed.

(Order.) And it is further ordered, that this and other cases against the "Capitol" be set down for hearing on said day.

Grounds referred to in foregoing rule.

Libellants allege that said Wm. Chapman's answer to the said interrogatories are indefinite, evasive, and irresponsive, and not such as the law requires.

SATURDAY, *April* 26, 1856.

The court met at 10 a. m. Present: Hon. T. H. McCaleb.

ROACH & LONG, with others,
vs.
STEAMER CAPITOL. } No. 7089. Submission of rule.

The rule herein entered on the 22d inst. came regularly up for hearing, T. B. Hart, esq'r, appearing for the libellants, and George S. Lacey, esq'r, for the claimant, W. L. Chapman. It was agreed that the interrogatories and answers herein should apply to all the pending suits against the "Capitol," as per consent filed. The case was then argued at length by H. Marr, esq., for libellants, and the proctor for claimants in reply, when the court took the whole matter under advisement.

U. S. DISTRICT COURT.

ROACH & LONG and others
vs.
STEAMER CAPITOL. } In admiralty. May 27th, 1856.

Judgment of his Honor Theo. H. McCaleb on merits of case.

The only question now to be determined in this case is, can the lien of material men be recognized and sustained against the boat in the possession of W. Chapman, who claims to be a purchaser for a valuable consideration without notice?

Let us inquire whether Chapman be such a purchaser. His own answers to interrogatories have been taken; from these, it appears: 1st. That James H. Ure, for whom the boat was built, is his son-in-law; 2d. That he paid $2,000 cash for his interest in the boat,

and executed his notes, payable to his own order, for $47,000, the balance of the price. A portion of his interest was purchased on the 17th of February, 1855, and the balance on the 21st of April, 1855.

He knew at the date of the purchase of the existence of some western claims against Ure, on account of the Capitol, but had not the slightest knowledge or information of any lien or privilege upon the steamer. He bought her free of all incumbrance.

The boat was a new boat, and it is fair to presume, considering the relations existing between Chapman and Ure, that the former must have been perfectly aware that the western claims to which he alludes were the claims of those who built and furnished supplies for the boat. It is difficult to believe that he was altogether ignorant of the character of those claims. His alleged ignorance that a lien existed is quite immaterial, if he had had notice that the claims of the builder and material men were yet unsatisfied. His ignorance of the law can hardly be recognized as a legal defence.

I am by no means satisfied, even from his own showing, that he was a purchaser in good faith, for a valuable consideration without notice. The execution of his notes for so large a sum, payable to his own order, was a consideration so easily to be exhibited under all the circumstances that it *stricks* the mind very forcibly as being merely nominal.

The small cash payment of $2,000 00 can hardly redeem the transaction from strong suspicions, that it was made for the purpose of covering the boat from the pursuit of creditors.

But the lien of material men prevail over the title of a bona fide purchaser without notice; but to have this, it must be enforced within a reasonable time. In this case, it is not pretended that the claim of the libellants was not so enforced. (The Barque Chusan, 2d Story, 456; 1 Conkling, 60.)

The purchaser, to be protected on the ground set up by the respondent in this case, must not only be bona fide and without notice, and for a valuable consideration, but he must have paid the purchase money. (2d Story's Equity, § 1,502.)

There has been no abandonment of the lien against the boat by giving an exclusive personal credit to the owner. When this case was before me on the former occasion, I considered the evidence was conclusive, to the effect that the execution of the draft by Ure never operated, and was never designed to operate, as a waiver of the lien. The giving of notes and drafts can never have such an effect, so long as the notes or drafts are held by the party to whom they were given, and are tendered to be delivered up on the trial. This is a principle so well established in the admiralty law, that it is unnecessary to say more on the subject.

I am satisfied that judgment should be given in favor of libellants, with costs.

Robert M. Lusher, esq'r, the commissioner in admiralty, will as-

ROACH & LONG, with others, vs. STEAMER CAPITOL. } No. 7089. Rule on Wm. Chapman.

On motion of T. B. Heart, esq., proctor for libellants, it is ordered that Wm. Chapman, one of the claimants herein, show cause, on Saturday, the 26th inst., at 10 a. m., why, on the grounds herewith submitted, the interrogatories propounded to him in the supplemental libels should not be taken as confessed.

(Order.) And it is further ordered, that this and other cases against the "Capitol" be set down for hearing on said day.

Grounds referred to in foregoing rule.

Libellants allege that said Wm. Chapman's answer to the said interrogatories are indefinite, evasive, and irresponsive, and not such as the law requires.

SATURDAY, *April* 26, 1856.

The court met at 10 a. m. Present: Hon. T. H. McCaleb.

ROACH & LONG, with others, vs. STEAMER CAPITOL. } No. 7089. Submission of rule.

The rule herein entered on the 22d inst. came regularly up for hearing, T. B. Hart, esq'r, appearing for the libellants, and George S. Lacey, esq'r, for the claimant, W. L. Chapman. It was agreed that the interrogatories and answers herein should apply to all the pending suits against the "Capitol," as per consent filed. The case was then argued at length by H. Marr, esq., for libellants, and the proctor for claimants in reply, when the court took the whole matter under advisement.

U. S. DISTRICT COURT.

ROACH & LONG and others vs. STEAMER CAPITOL. } In admiralty. May 27th, 1856.

Judgment of his Honor Theo. H. McCaleb on merits of case.

The only question now to be determined in this case is, can the lien of material men be recognized and sustained against the boat in the possession of W. Chapman, who claims to be a purchaser for a valuable consideration without notice?

Let us inquire whether Chapman be such a purchaser. His own answers to interrogatories have been taken; from these, it appears: 1st. That James H. Ure, for whom the boat was built, is his son-in-law; 2d. That he paid $2,000 cash for his interest in the boat,

and executed his notes, payable to his own order, for $47,000, the balance of the price. A portion of his interest was purchased on the 17th of February, 1855, and the balance on the 21st of April, 1855.

He knew at the date of the purchase of the existence of some western claims against Ure, on account of the Capitol, but had not the slightest knowledge or information of any lien or privilege upon the steamer. He bought her free of all incumbrance.

The boat was a new boat, and it is fair to presume, considering the relations existing between Chapman and Ure, that the former must have been perfectly aware that the western claims to which he alludes were the claims of those who built and furnished supplies for the boat. It is difficult to believe that he was altogether ignorant of the character of those claims. His alleged ignorance that a lien existed is quite immaterial, if he had had notice that the claims of the builder and material men were yet unsatisfied. His ignorance of the law can hardly be recognized as a legal defence.

I am by no means satisfied, even from his own showing, that he was a purchaser in good faith, for a valuable consideration without notice. The execution of his notes for so large a sum, payable to his own order, was a consideration so easily to be exhibited under all the circumstances that it *stricks* the mind very forcibly as being merely nominal.

The small cash payment of $2,000 00 can hardly redeem the transaction from strong suspicions, that it was made for the purpose of covering the boat from the pursuit of creditors.

But the lien of material men prevail over the title of a bona fide purchaser without notice; but to have this, it must be enforced within a reasonable time. In this case, it is not pretended that the claim of the libellants was not so enforced. (The Barque Chusan, 2d Story, 456; 1 Conkling, 60.)

The purchaser, to be protected on the ground set up by the respondent in this case, must not only be bona fide and without notice, and for a valuable consideration, but he must have paid the purchase money. (2d Story's Equity, § 1,502.)

There has been no abandonment of the lien against the boat by giving an exclusive personal credit to the owner. When this case was before me on the former occasion, I considered the evidence was conclusive, to the effect that the execution of the draft by Ure never operated, and was never designed to operate, as a waiver of the lien. The giving of notes and drafts can never have such an effect, so long as the notes or drafts are held by the party to whom they were given, and are tendered to be delivered up on the trial. This is a principle so well established in the admiralty law, that it is unnecessary to say more on the subject.

I am satisfied that judgment should be given in favor of libellants, with costs.

Robert M. Lusher, esq'r, the commissioner in admiralty, will as-

certain the precise amount now due from the steamboat "Capitol," and the final decree will be rendered against her for the sum so ascertained, in favor of the libellants in this case.

U. S. DIS'T COURT,
Eastern Dis't of Louisiana.

In admiralty.

Stated sessions, 1856. May term. Thursday, June 19th, 1856.

The court met at 10, a. m. Present, Hon. Theo. H. McCaleb.

ROACH & LONG and others
vs.
ST'R "CAPITOL." } No. 7089.

Reference to Amiralty Commissioner.

On motion of T. B. Hart, esq'r, proctor for libellants, and on his exhibiting to the court the stipulation and agreement of the parties, that the decision of the court in the case of John M. Monohan vs. the steamboat "Capitol," No. 7095, (also 7093,) shall be rendered and given in the above-numbered and entitled causes; and the court having, on the 27th May, 1856, decided said case of Monohan, in favor of the libellant:

It is now ordered that the admiralty commissioner, R. M. Lusher, esq'r, proceed to ascertain and assess the amounts due the respective libellants in the above causes, and report the same to the court for a final decree.

U. S. DISTRICT COURT,
East. Dis't of Louisiana.

ROACH & LONG, of Louisville, Kentucky,
vs.
STEAMER "CAPITOL." } No's 7089, 7097. In admiralty.

Admiralty Commissioner Report.—Filed June 19th, 1856.

To the Hon. Theo. H. McCaleb, judge of the dis't court of the United States for the eastern dis't of Louisiana, sitting in admiralty:

The ad'y commissioner after a careful examination of the pleadings and evidence in the above causes, consolidated, respectfully submits the following report:

The libellants' claim, in both libels, is founded on obligations of J. H. Ure, *answer* of the st'mbo't "Capitol," for a balance due on libellants' account, for furnishing the engines of the boat, and

other machinery, at Louisville, K'y, between the 13th Oct., and 23d Dec'r, 1854, inclusive.

This balance appears on the face of the account proved by Robert Hughes and *Simons* Watkins, to be $5,894 97, as follows:

Dr.—2 steam-engines, as per contract, $17,500 00; other machinery, $117 25.

Cr.—Cash paid from time to time, per contract, up to Jan'y 2d, 1855, $8,774 80; bal'ce June 5th, 1855, cash, (5 mo's acceptance,) $2,947 48, $11,722 28, $5,894 97. The account offered by claimants shows the same result, except that dated Jan'y 2d, 1855; it purports to be "settled."

In their libel (No. 7089) filed Dec'r 15, 1855, the libellants claim $2,947 48 (½ of the balance just alluded to) on a draft or bill of exchange of James H. Ure, dated Jan'y 2d, 1855, and payable at nine months with interest from its date, and $5 costs of protest.

In their more recent libel, (No. 7097,) Dec'r 29th, they claim $3,049 22, (exceeding the remaining half of said balance by $101 74,) on Ja's H. Ure's acceptance of their bill of exchange, dated July 28th, 1855, and payable four months after date, with interest thereon, and costs of protest.

It is obvious that the latter bill was drawn just before the maturity of Ure's acceptance of Jan'y 2d, 1855, at 7 months, for $2,947 49, and to effect its payment, and that interest from January was added to the principle.

The claim of interest thus set up in both the libels seems to the commissioner to be materially affected by the contract between Ure and libellants exhibited in evidence by both parties to this suit, and already alluded to in connection with the account sued on. By its terms, time was expressly allowed to the owner of the boat, for the payment of the balance of the price in three equal instalments, at 5, 7, and 9 months. This balance was just a moiety of the price, ($8,750 00,) and the three drafts of Ure taken in "settlement" or liquidation of the account on the 2d January, 1855, represented this amount, and corresponded in the time of payment with these provisions of the contract. In the absence of proof that interest was to accrue on each of these drafts from its date, the commission is satisfied that it can be allowed only from the respective dates of their maturity, which, on examination of those due, (at 7, and at 9 months, respectively,) he finds to be August 2d and Oct. 2d, 1855.

Regarding the admiralty lien recognized in these cases by the court as bearing on the liquidated balance of the account, and not on the amounts on the face of the bills of exchange annexed to the libels, the com'r, and in conclusion, respectfully *subjects* the following schedule of amounts due libellants:

Balance of principal, $5,894 97, with 6 p. c. int. on $2,947 49,

from August 2d, '55, and 6 p. c. int. on $2,947 48, from Oct. 2d, 1855.

Costs of protests ($5 on each) $10, and costs of suit to be taxed.

Respectfully submitted,
(S) ROB'T M. LUSHER,
Adt. Comm'r.

June 19th, 1856.

NOTE.—Suit 7089 (appealed) is founded on the 9 mo's draft. The appellant's liability, therefore, is for $2,947 48, with 6 p. c. interest, from Oct. 2d, 1855.

R. M. L., *Com'r, &c.*

U. S. DIS'T COURT,
East. Dis't of Louisiana.

In admiralty.

May term, 1856. Stated sessions. Friday, June 20th, 1856.

Court met at 10, a. m.: Present, Hon. Theo McCaleb.

ROACH & LONG, of Louisville, K'y, vs. STEAMBOAT "CAPITOL." } 7089 and 7097. { SAME vs. SAME.

Decree.

The court having, heretofore, on the 27th of May, 1856, adjudged the law of these cases (consolidated) in favor of the libellants, and being now satisfied from the report of the admiralty commissioner to whom the matter was referred, that the amount recoverable by the libellants under their contract with the owner of the "Capitol," and the admiralty lien existing thereon, at the time of the institution of their suits, was $5,894 97, the balance due on their account as liquidated on the 2d day of January, 1855, of which $2,947 49 was payable at seven months, August 2d, 1855, and the balance, viz, $2,947 48, at nine months, October 2d, 1855, with 6 p. c. interest on said respective sums from said respective dates of payments.

And it appearing of record herein, that said boat was released from seizure in libellant's first suit, (known as No. 7089,) on the 26th day of Dec'r, 1855, on a bond or admiralty stipulation executed by the claimants in the sum of $5,800 00, with sureties, of New Orleans, as follows: Dan'l Edwards, for $2,000 00; Ja's Mailot, for $3,000 00; and Wm. Davis, for $800 00; and in their second suit, (known as No. 7097,) on the 29th day of Dec'r, 1855, on a bond or admiralty stipulation, also executed by the claimants

in the sum of $6,100 00, with Young Allyn, of New Orleans, as surety, whereby said claimants, namely, Wm. Chapman, John Chapman, David Stonaker, Alex. Poché, (of St. James,) and Gerard Mangis, and Thomas M. Ure, of New Orleans, and the said sureties, respectively, became, and are bound, jointly and severally, to pay the amount awarded to the libellants in their said respective suits by the final decree therein.

Now, therefore, considering the law and the evidence, the court doth pronounce, order, and adjudge, and is hereby ordered, adjudged, and decreed that in favor of the libellants, Roach & Long, and against the said claimants and sureties, jointly and severally, there be judgment for the full sum of $5,894 97, and interest as aforesaid, that *it* to say, against the said claim'ts, and Daniel Edwards, Jo's Maillot, and William Davis, jointly and severally, for the sum of two thousand nine hundred and forty-seven $\frac{48}{100}$ doll's, with 6 p. c. int. thereon, from Oct. 2d, 1855, until paid, and $5 costs of protest, and against the said claimants and Youngs Allyn, jointly and severally, for the sum of two thousand nine hundred and forty-seven $\frac{49}{100}$ dollars, with 6 p. c. int. thereon, from August 2d, 1855, until paid; $5 costs of protest, with costs of suit to be taxed by the clerk.

U. S. District Court,
East. Dis't of Louisiana.

May term, 1856. Stated sessions. Saturday, June 7th.

The court met at 10, a. m. Present Hon. Theo. McCaleb.

Roach & Long and others
vs.
Steamer "Capitol." } 7089. In admiralty.

Claimants' Rule and Grounds for Rehearing.

On motion of Messrs. Lacy, Upton, and Wooldridge, proctors for the claimants, it is ordered by the court that the libellants shew cause, on Saturday, the 14th inst., at ½ half past 9 o'clock, a. m., why the final decree rendered herein should not be reversed, and a new trial and hearing granted to the claimants, upon the following grounds:

First. Because the court erred in imputing bad faith to the claimant, William Chapman, as upon hearing hereof the claimants will fully show.

Second. Because, though said claimant, Chapman, was in bad faith, and not a purchaser bona fide, the other claimants of said boat ought not to be made to suffer.

Third. Because, as on trial hereof the claimants will shewf the

libellants, by their proceedings of record, and their actions in the State courts, fully recognized and averred the ownership of the steamboat Capitol to be in these claimants, and that they cannot be permitted to disprove their own averments, though made in a different court, when made between the same parties, but that their said averments must be taken as full proof against them.

Fourth. Because, in law, no admiralty lien attaches before the ship has made a voyage.

Fifth. Because the obligations libelled upon are Louisiana paper, subject to Louisiana law, and the rate of interest it carries controlled by the same.

Sixth. Because the answer of Chapman to the interrogatories upon him served are full and explicit, and unavasive, and being such, are entitled to full consideration, and must be held as full proof of all the facts they divulge and contain.

Seventh. Because interest should not have been allowed in said final decree, except from the date of the maturity of the paper libelled upon and attached to said libels: whereas, in said decree, interest is allowed upon the same, from the day of January, 1855, the date at which said drafts were respectively drawn.

Eighth. Because the final decree of the court as rendered herein is also and for other and further reasons, which on trial hereof claimants will fully show, contrary to the law and evidence.

Ninth. Because some of the libellants in these causes have recognized the ownership of the steamboat Capitol, and gone into the State court, made themselves parties to the proceedings there had against her, and in the concursu, upon the bond given by the purchaser, for the price have taken their distributive portion.

U. S. District Court,
Eastern District of La.

May term, 1856. Stated sessions. Saturday, June 14th, 1856.

The court met at 10 a. m. Present, Hon. Theo. McCaleb.

Submission of Rule of Re-hearing.

Roach & Long, and others
vs.
Steamer Capitol. } In admiralty.

The rule heentrein ered on the 7th inst., having been called up, the claimants' proctors submitted their brief in explanation of the grounds assumed by them, and therewith exhibited records No. 9,273, 9,403, 9,404, 9,406, and 9,410, of the fourth district court of New Orleans.

J. B. Hart and H. Marr, esq'r, for the libellants, also submitted

the rule without argument. And the court took time to consider.

UNITED STATES DISTRICT COURT.

ROACH & LONG, and others
vs.
STEAMER CAPITOL. } In admiralty.

Decree on Application for Re-hearing.—Rendered and filed June 25th, 1856.

This is the third time this case has been before the court, and if the points had all been presented properly, the court might long since have been in possession of the merits, and one decree would have settled finally the rights of the parties. Lengthy arguments were heard upon the exceptions. These were overruled, and arguments were again heard upon the question, whether or not the purchaser or purchasers of the boat were such *such* in good faith, for a valuable consideration, without notice. The court is again called upon to review its decree upon this question, and is told that it has erred in saying that Chapman was not in good faith. If the court is in error, &c., (I pretend to no exemption from error,) the proctors should seek their remedy by appeal. These repeated applications to be heard upon points which have already been argued, imply a doubt whether the court has bestowed proper consideration upon questions presented.

I have thought, upon mature consideration, that Chapman was in bad faith, and I think so still. My reasons for the conclusion at which I arrived on this point have been already given in writing, and I need not repeat them. These reasons will also cover the grounds for which a new trial [is] now urged on behalf of other purchasers. Whether the latter be purchasers in good faith or not, they will not be permitted to defect the lien of the material men. So I have decided, and so I again decide.

The fact that the libellants asserted their claim against these purchasers in the State courts as owners of the boat, does not estop them in this court from alleging fraud and simulation in the purchase.

It is fair to presume that when suits were commenced in the State courts, the libellants were ignorant of facts which subsequent examination have disclosed. In bringing suits in the first instance, they looked, as they would naturally do, to the register, in order to ascertain the names of the owners. But it will hardly be contended that the insertion of a name in the register is conclusive upon all questions of good faith in the transfer.

In answer to the 4th point urged, why a new trial should be granted, I say again, that in my opinion a lien does exist in favor of builders and those who have furnished materials and supplies,

although the vessel may have never made a voyage, if it be shown that she was designed for navigation on waters within the admiralty jurisdiction.

The drafts sued upon are but the evidences of the original contract, and do not by any means operate as a waiver of the lien. The drafts are evidence that the claim of the libellants were liquidated, and interest should run from the date of final settlement, that is to say, from the date of the obligations, unless it appears that interest has been included in the amount for which the obligations were executed.

The 5th, 6th, 7th, and 8th grounds for a new trial have already been sufficiently considered.

In regard to the 9th ground, it is sufficient to say that I am aware of no evidence going to show that some of the libellants have gone into the State courts and made themselves parties there to the proceedings against the boat, and, in the concursu upon the bond given by the purchaser for the price, have taken their distributive portion.

A re-hearing is refused.

U. S. DISTRICT COURT,
Eastern District of Louisiana.

Stated sessions, 1856. May term.

SATURDAY, *June 28th*, 1856.

The court met at 10 a. m. Present: Hon. T. H. McCaleb.

ROACH & LONG, of Louisville, Ky.,
vs.
STEAMBOAT "CAPITOL," WILLIAM Chapman, JOHN Chapman, and other claimants.
} In admiralty. No. 7089, &c.

Appeals.

On motion of Messrs. Lacey and Upton, proctors for the claimants, and on their suggesting to the court that said claimants and their sureties are prejudiced and aggrieved by the final decrees of this court in the above-entitled causes, and that they desire to appeal therefrom to the next term of the circuit court of the United States for this district—

It is ordered, that said claimants and their sureties, in the respective suits numbered and entitled as above, have and be allowed, accordingly, an appeal from said final decrees, returnable at the November term, 1856, of the circuit court of the United States for this district.

It is further ordered, that said appeal shall operate as a supersedeas, and stay execution of the final decrees of this court, on the

said claimants and their respective sureties filing in court, *will in* ten days from the 25th inst., their bonds of appeal, with good and solvent security, in sums exceeding the amounts of said decrees respectively fifty per cent., according to the usage and practice of this court.

U. S. DISTRICT COURT,
Eastern District of Louisiana.

ROACH & LONG
vs.
STEAMER "CAPITOL." } In admiralty. No. 7089.

Appeal Bond, $4,420.—Filed July 5th, 1856.

UNITED STATES OF AMERICA,
Eastern District of Louisiann, City of New Orleans, ss:

Know all men by these presents, that we, William Chapman, John Chapman, David Stonaker, and Alexander Poché, of the parish of St. James, and Gerard Mengis and Thos. M. Ure, of New Orleans, and Daniel Edwards, Jos. Maillot, and Wm. Davis, also of New Orleans, (claimants and sureties of the steamboat "Capitol," on bond of December 26th, 1855, in case of Roach & Long vs. steamboat "Capitol," No. 7089,) as principals, and John D. Biew, of Daniel Edwards, and G. Lhote, of Jos. Maillot, as sureties, are held and firmly bound unto Roach & Long, of Louisville, Ky., in the sum of $4,420, (four thousand four hundred and twenty dollars,) to be paid to the said Roach & Long, their executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Dated at the said city of New Orleans this third day of July, in the year eighteen hundred and fifty-six.

Whereas the above-bounded claimants and sureties as aforesaid of the steamboat "Capitol," principals, have appealed to the circuit court of the United States for the eastern district of Louisiana from a final decree of the district court of the United States for said district, sitting in admiralty, bearing date the 20th, 25th June, 1856, in a cause in which the said Roach & Long, libellants, and the said William Chapman and others, owners of the steamboat "Capitol," claimants: Now, therefore, the condition of this obligation is such, that if the said appellants, principals herein, shall prosecute their appeal with effect, and pay all such costs, expenses, and damages as may be awarded against them as such appellants therein, then this obligation to be void; otherwise to remain in full force and effect.

(Signed) DAN'L EDWARDS, [SEAL.]
" JOHN D. BEIN, [SEAL.]

Sealed and delivered by Daniel Edwards, John D. Bein, in presence of—
ERNEST LAGARDE.
July 2d, 1856.

(Signed) J. MAILLOT, [SEAL.]
G. LHOTE, [SEAL.]

Wit: ROBT. M. LUSHER.
July 3d, 1856.

WM. CHAPMAN,
JOHN CHAPMAN,
A. POCHE,
GERARD MENGIS, and
THOS. M. URE,
By their proctors, per
(Signed) GEO. S. LACEY & R. A. UPTON.

Signed by Geo. S. Lacey, of firm of Lacey & Upton, proctors, in presence of—
ERNEST LAGARDE.
July 5th, 1856.

EASTERN DISRICT OF LOUISIANA,
City of New Orleans.

George Lhote, surety hereon, with Joseph Maillot, personally appearing, (in obedience to the order of the court of July 17th, 1856,) having been duly sworn, deposes and says, that he owns unincumbered real estate, situate in the city of New Orleans, of a value exceeding the amount of this bond, namely, $4,420, and that he is fully able to pay the same when thereto legally required.

(Signed) G. LHOTE.

Sworn to and subscribed at New Orleans, this 23d day of July, 1856, before

(Signed) ROBT. M. LUSHER,
U. S. Comm'r, East. Dist. of La.

UNITED STATES DISTRICT COURT,
Eastern District of Louisiana.

Stated sessions. 1856, May term.

MONDAY, *July* 14, 1856.

The court met at 10 a. m. Present: Hon. T. H. McCaleb.

Rule for Execution of Decrees.

ROACH & LONG
vs.
STEAMER CAPITOL. } In admiralty. No. 7089.

On motion of Messrs. T. B. Hart and Wm. H. Marr, proctors

for libellants, it is ordered by the court, that Wm. Chapman, John Chapman, and others, claimants of the steamboat "Capitol," and Daniel Edwards and Jos. Maillot, their sureties respectively, show cause on Thursday, the 17th day of July inst., at 10 a. m., why execution should not issue in the above-entitled cause, upon the ground that the appeal bonds given by said claimants and sureties are insufficient, and not such as the law requires.

Stated sessions. 1856, May term.

THURSDAY, *July* 17, 1856.

The court met at 10, a. m. Present, Hon. Theo. H. McCaleb.

ROACH & LONG, of Louisville, K'y,
vs.
STEAMBOAT "CAPITOL." } No. 7089.

Appeal by Dan'l Edwards et al., claimants, and D. Edwards and Jos. Maillot, sureties.

The rule herein entered on the 14th came up for hearing, T. B. Hart, esq., for libellants, C. W. Horner, esq., for Dan'l Edwards, and G. W. Race, esq., for Jos. Maillot, when, on motion of libellants' proctor, it was ordered, that as to Edwards, the rule be discharged; as to Maillot, his surety be justified, on oath, before a U. S. commissioner; and that, as to the claimants who have furnished no security to prosecute that appeal, the rule be made absolute.

UNITED STATES OF AMERICA,
Eastern District of Louisiana.

U. S. DISTRICT—CLERK'S OFFICE.

I, N. R. Jennings, clerk of said court, certify that the foregoing 116 pages of manuscript contain and form a correct transcript of the record of said court, in the case of Roach & Long, of Louisville, Ky., versus the steamboat "Capitol," Wm. Chapman, and others, claimants, and Dan'l Edwards and Jos. Maillot, sureties, No. 7089 of the docket of said court.

In testimony whereof, I hereto set my hand and affix the seal of said court, at New Orleans, this first day of November, A. D. 1856, and 81st year of American independence.

[SEAL.]

N. R. JENNINGS, *Clerk.*
By ROB'T M. LUSHER, *D'y Clerk.*

Opinion.—Filed 7th Nov'r, 1857.

ROACH & LONG, libellants,
vs.
THE STEAMBOAT "CAPITOL," Chapman and others, cl'mts.

Appeal from the district court of the U. S. eastern district of La.

The libellants claim to have a lien upon the steamboat Capitol, for the payment of the balance remaining due to them for machinery they furnished in her construction and equipment, at Louisville, Kentucky, in the year 1855.

In the year 1854, they made a contract with James H. Ure, for the supply of boilers and engines suitable for a boat, which other material men were building and equipping for him at that place, for which they were to be paid seventeen thousand dollars. One thousand dollars of this sum were payable at the date of the contract; seven thousand seven hundred and fifty dollars were to be paid from time as the work progressed, and the remainder in three equal instalments, at five, seven, and nine months, from the completion of the work, with a privilege to extend the third instalment for three months. For these instalments approved acceptances of bills of exchange were provided for as a security for the price in the contract. The boat was completed in January, 1855, at which time the purchaser and master (Ure) gave to the libellants three drafts, accepted by himself, and payable in New Orleans, for $2,947 $\frac{48}{100}$ each. At the same time he completed his settlements with other material men for other supplies. The boat was temporarily enrolled at Louisville, a few days after, and after her first voyage to New Orleans, a permanent enrollment was made at the custom-house, of that city. In April, 1855, she was purchased by the claimants, and was enrolled at the same city as their property, and has been employed since January, 1855, upon the internal waters of Louisiana, of which State Ure was a citizen. Two of the drafts given to the libellants have been protested for non-payment, and they claim that they are remitted to their original debt for the price of their labor and supplies, and that they have a lien under the general admiralty law, and also under the special statute law of Kentucky, and that none of the arrangements between them and Ure, or between Ure and the claimants, have operated to impair it. The first inquiry to be made is, whether there exists a maritime lien in favor of the libellants upon the steamboat, independently of the provisions of the statute of Kentucky? In the cases of "The General Smith," 4 Wheat., 443, Thomas vs. Osborn, 19 How., 22, and Pratt vs. Reid, 19 How., 359, the Supreme Court of the U. S. decided that a material man had a lien for money, re-

pairs, or supplies furnished to a vessel in a foreign port, in a case of necessity, upon a contract with the master; and in the St. Iago de Cuba, 9 Wheat., 409, the court say that the power of pledging or subjecting the vessel to material men is attached by the maritime law to the office of shipmaster; "but when the owner is present, the reasons ceases, and the contract is inferred to be with the owner himself, on his ordinary responsibility, without a view to the vessel as the fund from which compensation is to be derived." The reason for the distinction is founded in the necessities of commerce, and the rule was framed to meet the exigencies that commercial necessities created. The master, in the course of a ship's navigation, was exposed to danger, privation, and distress, from which the power of sale or pledge of the ship for supplies or necessaries might be the only resource for the relief of the crew, ship, and cargo, and hence this power was granted. But the admiralty law as it existed in Great Britain, and was received in the United States, never implied any authority in favor of a master to hypothecate a ship for materials to be applied in her construction, nor did it yield to the shipwright or material men a maritime lien as a security for the price specified in a contract for building a ship. Such contracts were regarded as municipal contracts, and were interpreted according to those laws that were applicable to such obligations. If the shipwright furnishes work and labor only, and the employer supplies the materials requisite for the construction of the ship, he is a conductor operarum, and the contract is locatio operis faciendi, and is governed by the laws applicable to such contracts. But if, as in this case, the materials and work are afforded by the same person at an agreed price, then the contract is one of sale. "Ordinarily, articles in the course of manufacture do not pass to the purchaser, though they may, if such be the intention of the parties."

Wood vs. Bell, 36 L. & Eg., 148. The Spanish and Portuguese S. S. S. Co. vs. Bell, 34 L. & Eg., 178.

In the present case, the facts that the payments were made as the work progressed, and that the machinery were destined for a particular boat, are circumstances to indicate that the general property in the materials passed to the purchaser as they were put together. But whether Ure became the proprietor while the work was progressing, or only after the completion of the boat, he took it as a purchaser, and unaffected by any lien under the general admiralty law, as it is understood in the United States or Great Britain. 1 Hagg., 320; Abb. Ship, 142, 147; Bee Adm., R. 131. The cases in which a lien has been asserted in the admiralty have proceeded upon statutes applicable to the particular case. Read vs. Hull of a New Brig, 1 Story R., 244. The Young Mechanic, 2 Curtis R., 402. The statute law of Kentucky provides that "mechanics, tradesmen, and others, shall also have a lien for work, supplies,

materials, stores, and provisions, done or furnished on or towards the building, repairing, fitting, furnishing, or equipping the boat or vessel in this State, with a preference or priority therefor over any other debt of the owner, except to the officers and hands, and over all other liens thereafter created. When so done or furnished out of the State, there shall be a like lien therefor, which shall have precedence next after that given when done or furnished in this State; but if done or furnished out of the State subsequent to that done or furnished in the State, the liens shall be joint and equal."

Revised Statutes K'y, 143, § 2. The liens given in this act may not be enforced by attachment out of chancery against a purchaser without actual notice, unless the suit was instituted within one year from the time the cause of action accrued, or unless notice be endorsed on or attached to the enrollment; there is no doubt that this statute was designed to create a lien similar to the maritime lien, and that one existing under this statute might be enforced in the courts of the U. S. in a proper case. The question in this case is, whether this lien has been impaired by the removal of the boat to Louisiana, in January, 1855, and her employment in the internal trade of that State, till her seizure in December of that year. Mr. Justice Story, in the first edition of his Conflict of Laws, stated the question and answer, as follows: the question then naturally arises, whether, if such privileges, hypothecations, or liens are recognized in the country where the contracts or acts which gave rise to them are made, they are to be deemed obligatory in every other place where the property may be found, even against innocent purchasers, or against creditors who would otherwise by the law of rei sitae have a preference of right? Would an attachment, for instance, of foreign creditors prevail against them in the tribunals of the domicil of such creditors? Upon the general principles already stated as to the operation of contracts, and the rule that movables have no locality, it would seem that these privileges, hypothecations, and liens ought to prevail over the rights of subsequent purchasers and creditors in every other country. That having once attached rightfully in veru, they ought not to be displaced by the mere change of local situation of the property. Conf. of Laws, § 402.

In the succeeding edition, the doctrine contained in the preceding paragraph is thus qualified: "Nevertheless, there is no inconsiderable conflict of opinion among foreign jurists, and even among domestic jurists, as to the extent to which the right of the privilege or priority ought to be allowed in such cases when such privilege or priority has arisen under foreign laws against subsequent purchasers, or against creditors in the country where the property is subsequently found. Whether an exception would be allowed generally in favor of maritime liens and privileges, and priorities founded upon the public policy of giving them full effect as matters of public convenience and interest founded upon the necessities and exigencies of commerce and naval intercourse, may admit of question."

In other portions of this work, the learned commentator shows very clearly that the rule first stated was generally repudiated, and he does not show that, from this general repudiation, maritime liens form a recognized exception. Thus, the priorities granted by the law of a decedent's domicil of one class of creditors over another, is not recognized in another forum where he may have left assets. A creditor, by bill of exchange in Holland, has a preference over other creditors, but that preference is not acknowledged in other states where the Hollander may have property.

Conf. of Laws, § 524 to 528, at § 323. The learned commentator says: "But the recognition of the existence and validity of such liens by foreign countries is not to be confounded with the giving them a superiority over all other liens and rights justly acquired in such foreign countries under their own laws, merely because the former liens in the countries where they first attached had there by law or by custom such a superiority or priority. Such a case would present a very different question arising from a conflict of rights equally well founded in the respective question. This very distinction was pointed out by Mr. Chief Justice Marshall, in delivering the opinion of the court in an important case. His language was: The law of the place where a contract is made, is, generally speaking, the law of the contract, i. e. it is the law by which the contract is expounded.

But the right of priority forms no part of the contract. It is extensive, and rather a personal privilege, dependent on the law of the place where the property lies, and where the courts sits which is to decide the cause. Harrison vs. Story, 5 Cr., 289, 298. I have thus collated the observations of Mr. Justice Story in the text of his work, to show that the rule first above quoted had not been generally recognized. In a note to § 323, he states the question, "Whether a bottomry bond, which, by the law of most maritime countries, has a priority or preference over most other claims, would be allowed to have that preference in all countries," and thus answers: "If the local law where the bond was sought to be enforced differed as to such priority or preference from that of the place where the bond was made and executed, it might be a very nice question which ought to prevail, and would, therefore, probably be disposed of upon consideration of local and municipal policy."

This question is incidentally considered by Troplong, in his work on "Privileges et Hypotheques," in discussing the question whether the property of a foreign tutor of a foreign minor would be subject to the legal hypothecation imposed by the laws of France, if the property of the tutor were situated in France. He decides that neither the law of the domicil of the minor nor of the tutor would be regarded in France to create such an incumbrance; that those laws could not cross the frontiers of France. But (contrary to the opinion of Grenier, Lamoignon, and Brodeau) he maintains that,

because the minority and the tutelary relation between the minor and tutor would be recognized, that the law of France would attach all the consequences belonging to the relation in that kingdom.

The effect and operation of the law of the place of the contract to create and preserve an incumbrance upon personal property are subject to be modified by the law of the place where the property is situate, and where the obligee seeks to enforce his claim. The question arises, what recognition does the law of Louisiana make of the liens and privileges conferred by the laws of other States upon personal property situate within its limits?

It is an established principle in the law of Louisiana that there can be no valid mortgage of personal property. C. C. 3248. Franklin vs. Warfield, 8 Mart. U. S. 441. Ships and other vessels are not susceptible of being mortgaged, except according to the usages of commerce.

The taking of a mortgage on a vessel by notarial act, to secure loans due by the owner on account of the vessel, does not confer any right or privilege whatever.

Grant vs. Fial, 17 La. R. 159. 2 Rob. 35, 89.

The policy of the law of Louisiana is to prohibit the evidence of ownership of personal property from being in the hands of one that is [in] possession, while the title was held by another. The civil code allows of the pledge of movable property, but it is essential to the contract of pledge that the creditor be put in possession of the thing given to him in pledge, and consequently that actual delivery of it be made to him, unless he has possession of it already by some other right. C. C. 3120.

The question now arises, whether any provision has been made by the code of Louisiana for a case like the present—the case of a lien created by the law of another State upon a vessel built in that State for citizens of Louisiana, and subsequently brought into Louisiana by him, and incorporated into the mass of its property? The answer is, that the code of Louisiana has enumerated the privileges which the State is willing to recognize, and has defined their grade and dignity and duration, and among these there is one for "sums due to sellers, those who have furnished materials and workmen employed in the construction of a vessel, if the vessel has never made a voyage; and those due to creditors for supplies, labor, repairing, victuals, armament, and equipment, previous to the departure of the ship, if she has made a voyage." C. C. Art. 3204, § 8.

This article covers the claim of the libellants; and if the conditions under which the validity of the lien depends have been fulfilled, they will be entitled to a decree, and not otherwise.

The question involved in this inquiry came before the supreme court of this State in the case of Lee vs. his Creditors, 2 Ann., 599, and their lucid discussion of the various points it embodies relieves me from much of my difficulty. The decree under review in that

cause was one in favor of certain claims for work done and materials furnished in building a steamboat in Kentucky, which was removed from that State, and was employed between New Orleans and Nashville for five months before the material men residing in Kentucky attempted to enforce the lien created by a statute of that State similar to that which I have quoted.

The chief justice, in delivering the opinion of the court, says, "We consider that the extreme term for the duration of privileges on steamers, when engaged in making voyages between this port and those of other States, is sixty days." The subject was first brought to the consideration of the supreme court in 1836. Terry vs. Terry, 10 La. 79. The supreme court adopt the views of the judge of the commercial court, who says, "That mature reflection will demonstrate the impracticability of permitting the laws of privilege or lien to follow movables into a new jurisdiction. That lien or privilege is part of the remedy seems clear, when we consider the purpose for which they are given. They are the means of enforcing a right, which right is always the payment of a sum of money, and a privilege or lien is the means of compelling the payment, and is analogous to a seizure or execution. We do not respect mortgages given in other States when they are claimed on slaves brought into Louisiana. A party who claims a privilege on a movable must not permit that movable to leave the jurisdiction of the State or country which confers the privilege. The utter impracticability of paying any attention to the laws of lien or privilege of other States on vessels or other movables is a complete answer to any claim of right founded on the laws conferring such liens or privileges."

The chief justice vindicates this opinion, and affirms, "That a failure to acknowledge or enforce liens or privileges on movables created by foreign liens cannot be considered as derogating from the comity which prevails among States in relation to the effect to be given to foreign laws is obvious. A nation within whose territory personal property is found has an entire jurisdiction over it while there as it has over immovable property. Its exercise for all purposes is a question of policy, and may be co-extensive with its authority over the latter."

He says, "The right of a creditor to enforce a privilege created by a foreign law on a movable within this State, as part of the original contract, is the antagonist theory to that which considers the privilege as exclusively appertaining to the remedy. We do not feel ourselves called upon to adopt either in the present case, as our legislation has placed the movable exclusively under the operation of our laws, which the sovereign power has the same right to do as it has to determine what property shall and what shall not be subject to the payment of debts under execution."

This decision has been followed in a number of cases that have

arisen since it was delivered, (1847,) and is the settled doctrine in the State. 3 Ann. 40. 6 Ann. 193. 11 Ann.

The power claimed for the State to regulate the disposition of movable property brought within its limits, and to protect her citizens from dormant titles or tacit liens has been repeatedly exercised in Great Britain and the United States. The privileges attached to purchases in market overt in the city of London, and from the holders of certain documents of title under various statutes, are instances of this sort.

Lyons vs. Pass, 11 A. & E., 326. Addison on Cont., 217, 317. Turner vs. Fenner, 19 Ala. R., 355.

The question now arises, whether I am bound to enforce the municipal law of the State of Louisiana in the court of admiralty in cases where it applies? And the question can receive but one answer.

If the law of Louisiana operates on this subject, it must be enforced in the courts of the United States in the fullness of its spirit. The only question is, does that law apply? I have shown that no lien exists upon this vessel in favor of the libellants, except it was created and has been continued by the energy and force of the statute law of Kentucky. I have shown that the State of Louisiana does not recognize privileges or liens like those created by the statute law of Kentucky for a longer period than sixty days, although established for a longer period by the laws of the State whence the movable was brought. And now the question is, can the courts of the United States establish another comity than that which has been established by Louisiana, and preserve tacit liens and dormant privileges which are extinct under the law of Louisiana, when the property has been employed with the knowledge and consent of material men within the State of Louisiana, because his lien was created in a sister State from which the property was removed? In my judgment, the courts of the United States have no such power.

The question before me is not whether the legislature of a State may impair any of the jurisdiction of the courts of the United States in the administration of the ancient and accustomed law of the admiralty as it existed when the Constitution was made, or may be rightfully established by act of Congress. No question of the kind arises in this case.

The supreme court having decided that a lien on a domestic vessel arising under State authority might be enforced in the courts of admiralty of the United States, it became necessary in this cause to consider whether the claim was valid under the State law of Kentucky; whether the State law has any extra-territorial operation, and under what limitations; and whether, in the case of a conflict between that law and the law of Louisiana, where the property is, and where the court is sitting, which must be enforced?

My conclusion is, that the decision of this court must conform to the law of Louisiana, and that in this cause the libellants have no privilege on this vessel.

Decree reversed, libel dismissed.

J. A. CAMPBELL,
Asso. Justice S. C. U. S.

Minutes.—November term, 1857.

Decree.

NEW ORLEANS, *Saturday, 7th November*, 1857.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge. Absent, Hon. J. A. Campbell, presiding judge.

ROACH & LONG
vs.
STEAMER CAPITOL, claimants and sureties. } 2675.

The following decree was this day received from Hon. J. A. Campbell, presiding judge, and ordered to be recorded:

This cause came on to be heard at the last term of the court upon the transcript of the record from the district court of the United States for the eastern district of Louisiana, and was argued by counsel. On consideration whereof, it is now ordered, adjudged, and decreed, that the decree of the said district court be reversed, and that the libel herein be dismissed with costs.

Petition of Appeal.—Filed 13th Nov'r, 1857.

UNITED STATES CIRCUIT COURT,
Eastern District of Louisiana.

ROACH & LONG
vs.
STEAMER "CAPITOL," Chapman & als., claimants and respondents. } In admiralty.

The above-named libellants conceiving themselves aggrieved by the final decree entered on the seventh day of November, 1857, in the above-entitled cause, do hereby appeal therefrom to the Supreme Court of the United States; and they pray that this their appeal may be allowed, and that a transcript of the record, pleadings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

(Signed) T. B. HART,
Proctor for Libellants.

Minutes.

November term, 1857. Order for Appeal.

NEW ORLEANS, *Friday*, 13*th November*, *A. D.* 1857.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge. Absent, Hon. J. A. Campbell, presiding judge.

ROACH & LONG
vs.
STEAMER CAPITOL, Chapman and als., clmts. } 2675.

On motion of T. B. Hart, esq'r, of counsel for libellants, and on presenting and filing the petition of said libellants, setting forth that they are aggrieved by the decree herein rendered on the seventh November instant, and are desirous of appealing therefrom to the Supreme Court of the United States, it is ordered that the appeal be allowed, as prayed for, on libellants giving bond, conditioned, according to law, in the penal sum of three hundred dollars, with John R. Shaw, as surety thereon.

Bond for Appeal.—Filed 14th Nov'r, 1857.

Know all men by these presents, that we, Bryan Roach and Dennis Long, composing the commercial firm of Roach & Long, as principals, and John R. Shaw, as surety, are held and firmly bound, jointly and severally, unto Daniel Edwards and Joseph Maillot, in the sum of three hundred dollars, lawful money of the United States of America, to be paid to the said Daniel Edwards and Joseph Maillot, their heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the 13th day of November, in the year of our Lord eighteen hundred and fifty-seven.

Whereas, the above-named obligors, Roach & Long, have applied for and obtained an order of appeal to the Supreme Court of the United States, from the decree rendered against them by the circuit court of the U. S. for the 5th circuit and eastern district of Louisiana, in the case of themselves, Roach & Long, vs. The Steamer Capitol, Wm. Chapman and als., clm'ts; Daniel Edwards and Joseph Maillot, sureties.

Now, the condition of the above bounden, Roach & Long, principals, and John R. Shaw, surety, will well and truly pay to the said Daniel Edwards and Joseph Mailott all such damages and costs as may be awarded against the said Roach & Long.

(Signed) ROACH & LONG, [SEAL.]
By T. B. HART, *Att'y.* [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) JOHN R. SHAW, [SEAL.]

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I certify that the foregoing ninety-four pages contain and form a full, true, and complete transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of *Loach* & Long, libellants, vs. Steamer "Capitol," and her claimants. Daniel Edwards and Joseph Maillot, sureties and appellees. No. 2675 of the docket of the said court.

[L. S.] Witness my hand and seal of the said court, at New Orleans, this 26th Dec'r, 1857.

J. W. GURLEY, *Clk.*

THE UNITED STATES OF AMERICA.

The President of the United States to Daniel Edwards and Joseph Maillot, sureties, upon the stipulation for the release of the steamer "Capitol," in a case of Roach & Long, vs. steamer "Capitol," and her claimants, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition and order of appeal, filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Roach & Long, a commercial firm, composed of Bryan Roach and Dennis Long, are appellants, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition and order mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable R. B. Taney, Chief Justice of the Supreme Court of the United States, this fourteenth day of November, in the year of our Lord one thousand eight hundred and fifty-seven.

THEO. H. McCALEB,
U. S. Judge.

[Endorsed:] United States circuit court. No. 2675. Roach & Long vs. Steamer Capitol, her clm'ts and sureties. Citation in appeal.

Marshal's Return.

Rece'd November 14th, 1857, and on the same day served copies of the within citation in appeal on Messrs. Daniel Edwards and Joseph Maillot, in person, in the city of New Orleans, and returned November 16th, 1857.

CHA'S CATOIR, *D'y M.*